"A STUDY OF THE FACTORS UNDERLYING THE SENTENCING PRACTICE OF THE JUVENILE COURTS OF STOKE-ON-TRENT AND LEEK"

A thesis submitted for the degree of Doctor of Philosophy at the University of Keele - November 1971

by

Bozkurt Sural

ABSTRACT

This thesis examines the work of two Staffordshire juvenile courts, Stoke-on-Trent and Leek, from the point of view of the factors which are most influential in determining the sentencing decisions of the magistrates. These factors are: the offence, the previous criminal record, offences to be taken into consideration, age, sex and the welfare needs of the juvenile offender.

The juvenile court was established in England in 1908. Since then, to have regard for the welfare needs of juvenile offenders had become an important, though not an over-riding, consideration in juvenile court sentencing. The Children and Young Persons Act, 1969, has now made the welfare principle an over-riding consideration in the case of "children".[1] Chapters 2, 3 and 5 deal with the changes which took place until the coming into force of the 1969 Act and the aim of the various sentences. The most recent system is described, though not analysed, in Chapter 4.

The effect of the welfare principle has been that the juvenile court magistrates are directed to attach no undue importance to the nature of the offence, and devote at least as much of their attention to the welfare needs of the juvenile offender so that they may order a suitable sentence. However, the choice of sentence to suit the welfare needs of the juvenile offenders is bound to conflict in some degree with the business of retributive justice. Chapter 6 describes the problem created by the welfare principle, and states the hypothesis

1 Throughout this thesis it has been assumed that 1969 Act will be implemented in its entirety in due course. At present sections 4 and 5, except sub-sections 8 and 9, have not been brought into force.

and the aim of the study.

The research method is described in Chapter 7.

Sentencing takes place within the social setting in which decisions are made. Accordingly, Chapter 8 describes the socio-economic background and the juvenile delinquency in Stoke-on-Trent and Leek. The following Chapter describes the sentencing policies of both courts in 1968.

Sentencing is also determined by magistrates' various individual characteristics e.g. age, sex, educational background, experience on the bench, social class and social attitudes. All these characteristics of Stoke-on-Trent and Leek magistrates are described in Chapter 10. In the following chapter the effect of social attitudes of magistrates on sentencing is analysed.

Chapter 12 contains an investigation of the welfare factor in juvenile court sentencing and of the relation between a measure of magistrates' sentencing attitudes and their actual sentences. Chapter 13 analyses the effect of various factors in sentencing. These factors are as follows: the offence, the previous criminal record, offences to be taken into consideration, the welfare principle, age and sex. The final chapter contains a summary of the main conclusions.

SUMMARY

Sentencing provides the basis for all subsequent treatment of the offender. Accordingly it arouses wide interest amongst administrators, criminologists, the courts and the public.

When the aim of the sentencing was retribution only, it did not require scientific evaluation. Sentences did not have to be effective they had only to be just. The shift in emphasis from meting out punishment based solely on the offence to reforming the offender provides the need for evaluation.

The juvenile court was established in England in 1908. Since then, to have regard for the welfare needs of juvenile offenders has become an important, though not an over-riding, consideration in juvenile court sentencing. The effect has been that the juvenile court magistrates are directed to attach no undue importance to the nature of the offence, and devote at least as much of their attention to the welfare needs of the juvenile offender so that they may order a suitable sentence.

However, the choice of sentence to suit the needs of the juvenile offender is bound to conflict in some degree with the business of retributive justice. The aim of the present study is to discover which factors are most influential in determining the sentencing decisions of the juvenile court magistrates. These factors are: the nature of the offence, the previous criminal record, the offences to

be taken into consideration, the age, the sex, and the welfare needs of the juvenile offender.

Sentencing takes place within the social setting in which decisions are made. Therefore the socio-economic background of Stoke-on-Trent and Leek has also been considered. Moreover, sentencing is determined not only by the information presented to the magistrates. It is also determined by magistrates' various individual characteristics such as, age, sex, educational background, experience on the bench, social class and social attitudes. For this reason, these characteristics of the magistrates have been described and the social attitudes' effects on sentencing have been analysed in the present study.

ACKNOWLEDGEMENTS

I owe a debt of gratitude to a number of people who contributed to the completion of this research. My thanks are particularly due to Mr. Roy E.A. Mapes and Professor Howard Jones who have supervised the research, showed great interest and offered invaluable advice, criticism and encouragement. Of course, none of these persons is in any way responsible for the faults and omissions which remain and the views expressed by me; these are entirely my responsibility.

I also wish to record my thanks to those Stoke-on-Trent and Leek juvenile court magistrates who kindly accepted the interviews. Mr. Cyril White, Clerk to the Justices in the City of Stoke-on-Trent and Mr. Phillip May, Clerk to the Justices in Leek, and their staff who were unfailingly helpful and courteous. Mr. George R. Chesters, the then principal probation officer in the City of Stoke-on-Trent, and Mr. Samuel Whittaker, the probation officer in Leek, graciously granted access to the social enquiry reports. They and their colleagues received me as their friend and freely discussed all aspects of the research which facilitated immeasurably the collection of the data. Staffordshire County and Stoke-on-Trent Constabulary kindly supplied the information on the cautions administered to children and young persons for indictable offences in the City of Stoke-on-Trent during the year 1968.

I also thank Mrs. Brenda James who typed the whole thesis with great speed and accuracy.

CONTENTS

CHAPTER 14

CONCLUSIONS

CHAPTER 1

INTRODUCTION

The sentencing of offenders occupies a central position in the administration of criminal justice. Decisions made at this stage not only determine the course of immediate action but also provide the basis for all subsequent treatment of the offender. Accordingly, sentencing will continue to arouse wide interest amongst administrators, criminologists and the courts. Most sentencing studies are undertaken in the hope of providing some help and guidance to those concerned in the selection of the 'right' form of sentence for the individual offender.

"Sentencing used to be a comparatively simple matter. The primary objective was to fix a sentence proportionate to the offender's culpability and the system has been loosely described as the 'tariff system'. The facts of the offence and the offender's record were the main pieces of information needed by the court, and the defence could bring to notice any mitigating circumstances".[1] --- "In many cases, particularly those appearing at the superior courts, the court can still do little more than punish the offender for what he has done, and in every sentence the offender's culpability has to be taken into account. But in a considerable, and growing number of cases the 'tariff system' can no longer be relied on to fit all the considerations in the court's mind. The need to deter or reform the offender, the need to protect society, and the need to deter potential offenders may in a particular

[1]Report of the Interdepartmental Committee on the Business of the Criminal Courts, Cmnd., 1289, 1961, para. 257, H.M.S.O.

case be conflicting considerations. These objectives have an importance of their own and have a separate effect on the decision of the court."[1] Sentencing has now become a much more complex task and is, in a sense, an emergent branch of the law.

Sentencing with just retribution as its only aim did not require scientific evaluation. The appropriateness of a sentence could be judged solely on the basis of the degree to which it was in accordance with the prevailing values of society which were usually expressed in legislation, judicial precedent and the norms of the legal profession. Sentences did not have to be effective, they had only to be just. The shift in emphasis from meting out punishment based solely on the offence to reforming the offender provides the necessity for evaluation.

The Gladstone report in 1895 recommended that the nature of the offender ought to be considered when treatment was ordered, not merely the form of his offence, as had been the determining element up to that time. In 1933, the Children and Young Persons Act, made clear that the welfare of the juvenile offender should be an important consideration for the juvenile court. The effect has been that the juvenile court magistrates are directed to attach no undue importance to the nature of the offence, although they must establish first of all whether or not it was actually committed and devote at least as much of their attention to the welfare needs of the juvenile offender so that they may order suitable sentence.

[1] ibid., para. 262.

This is therefore the national policy of the juvenile courts by statute.

The sentencing policy of the juvenile court has received comparatively less attention than the various other branches of the penal system. In the case of the adult offender, the problem of retribution and deterrence still arises to a considerable extent, and the application of a sentence appropriate to the personality and personal circumstances of the offender is only one consideration among others. On the other hand the important, though not the only, function of the juvenile court is to consider the welfare of the juvenile, and this aim clearly requires the fitting of the court's sentencing decision to the individual needs of the juvenile. The nature and seriousness of the offence committed, which is the dominating factor under a retributive system, seems to have lost a good deal of its significance in the juvenile court. However, choice of sentence to suit the needs of the offender is bound to conflict in some degree with the business of retributive justice, and the way in which the courts resolve the dilemma is one of the more interesting aspects of sentencing.[1] It therefore seems that there is a case for empirical studies of the various factors in juvenile court sentencing in the analysis of the application of principles underlying the sentencing policy of the juvenile courts.

The present study of the sentencing policy of the Stoke-on-Trent and

[1] J.E. Hall Williams, "Myths of Criminal Justice", in Crime-Myths and Reality, 1969, p.10.

Leek juvenile courts is an attempt to evaluate how far the 'welfare' principle is being put into practice. Are the decisions of juvenile court magistrates in fact mainly conditioned by the nature of the offence, the previous criminal record, or by the individual needs of the juvenile offender? If similar offences are given different sentences, what factors determine the sentencing decisions of the magistrates?

Since the research was planned to include long interviews with magistrates who often reside over large geographical areas, the interests of limited resources was best served by the selection of courts which were near at hand to the University of Keele. This being so, the City of Stoke-on-Trent was selected as representing an area of urban-established industry and the town of Leek was also chosen to provide a more rural contrast.

The present survey was carried out in 1968 and so the analysis and the findings relate to the juvenile court system which was in existence before the coming into force of the Children and Young Persons Act, 1969. This aspect should be taken into account throughout the present study, since the terminology is in accordance with, what is now called the old juvenile court system. Changes brought by the Children and Young Persons Act, 1969, were described, though of course, were not analysed in the present study, as being the 'future system'.

Apart from using the Criminal Statistics and Supplementary Criminal

Statistics for the year 1968, the relevant statistics relating to the nature and the amount of delinquency and the sentencing policies of the juvenile courts in Stoke-on-Trent and Leek were extracted from the Juvenile Court Registers, 1968, of the both areas. Legal, social and psychological criteria were extracted from the various reports submitted to the courts. In addition to this, twenty-five magistrates from Stoke-on-Trent and nine magistrates from Leek juvenile courts were interviewed. However, detailed information on this subject will be given in Chapter 7 which deals with the methodology of the present study.

Finally one important point is to be made clear. Throughout the study the phraseology used is not applicable in the context of the juvenile court law. For example 'sentence' is used instead of 'order'; 'conviction' is used instead of 'finding of guilt'. Again, 'juvenile', a convenient but non-legal term for a person who is either a child (In English criminal law a person under fourteen years of age) or a young person (a person between his fourteenth and seventeenth birthdays) is used unless it is meaningless within the context. Such phraseology is adopted in the interests of consistency with current criminological useage.

CHAPTER 2

METHODS OF PUNISHMENT AND TREATMENT OF JUVENILE OFFENDERS IN ENGLAND AND THE ENGLISH JUVENILE COURT - HISTORICAL BACKGROUND.

I - METHODS OF PUNISHMENT AND TREATMENT OF JUVENILE OFFENDERS IN ENGLAND

1. Introduction

It has taken considerable time to achieve the humanitarian policy which society today adopts toward the juvenile offender. In the earlier years of the nineteenth century there was no substantial body of law relating the treatment of the juvenile offender both in the legal procedure associated with his trial, as well as in the ways he was dealt with after the trial. The principles of common law governed policy and determined the manner in which old and young alike were punished. Today the law relating to juvenile offenders is in many respects separate and distinct from the law applicable to adults. Juvenile courts are distinct from ordinary magistrates' courts in their composition, in their jurisdiction, and in their procedure. But this has been evolved from the common law, and the present situation must be seen against that background. However, before describing the historical changes which have taken place, it seems necessary to consider the 'age of criminal responsibility' first.

2. The Age of Criminal Responsibility

The retributive theory of punishment imports the doctrine of moral responsibility into the law because no one can justly be punished unless he is morally responsible. Criminal responsibility commonly denotes liability to be prosecuted and convicted in a criminal court and is based on what G. Williams has described as "the mystical theory of moral responsibility".[1] According to the theory of moral responsibility the

[1] G.L. Williams, "The Criminal Responsibility of Children", [1954] Crim. L.R., 493.

only persons capable of acting wrongly are those who had the capacity to appreciate that their acts were wrongful: as a result of this, mentally ill and children are to be exempted from punishment and so from conviction. This creates a problem; to define 'children' for the purpose of responsibility, and somewhat arbitrary lines have to be drawn.

It is commonly argued that such thinking is now irrelevant, for the guiding principle in the treatment of children and young persons is to have regard to their welfare; and welfare and punishment may be irreconcilable.[1] It was claimed, however, that "This argument may fall short of its target: it may be good for the child if he should be found guilty of an offence, so that he may learn that such conduct meets with public disapproval, even if he is not to be punished for it. To remove even conviction, one must rely on further arguments, based largely on the stigma attaching to a finding of guilt".[2]

Ever since the registration of births became common in the seventeenth century, under the common law a child under seven could not be guilty of any criminal offence whatever evidence might be available of his possessing a mischievious discretion; for ex praesumptione iuris he had

[1] J.D. McClean and J.C. Wood, "Criminal Justice and the Treatment of Offenders", 1969, p.177.

[2] ibid.

not discretion and understanding; and the presumption could not be rebutted. This irrebutable presumption, which is described in the Latin maxim doli incapax, had been put forward in the view of either a child of such 'tender years' should not be convicted, or that he should be pardoned at once.[1] The minimum age of criminal responsibility was raised to eight by statute in 1933[2] and it has been fixed at ten since the passing of the Children and Young Persons Act, 1963.[3] From the age of ten to fourteen there is a rebuttable presumption that a child is doli incapax which means that there will not be liability unless the prosecution established knowledge of wrongfulness of the act. In other words, children between these two ages are responsible not as a class, but as individuals, when they know their act to be wrong.[4] To rebut this presumption proof of a particularly evil disposition can supplement age, malitia supplet aetatem. For this purpose evidence should be adduced of the home background and of all the juvenile's circumstances.[5] In this way, the age of a child could give an exemption from criminal responsibility; but unless the child came within the exemption, his liability to conviction was the same as that of an adult.

[1]The rule dates from at least 1302; J.W.C. Turner, "Russel on Crime", Vol. I, 1964, pp. 98-99.

[2]Children and Young Persons Act, 1933, s. 50.

[3]Children and Young Persons A ct, 1963, s. 16(1).

[4]G.L. Williams, op. cit.

[5]In F.V. Padwick, [1959] Crim. L.R. 439; Lord Parker, C.J. said: "In a rotten home, what is more likely than that a child is brought up without knowledge of right and wrong?" In this case the presumption of innocence was rebutted, in THE TIMES, April 24, 1959.

In practice there are doubts about the meaning of 'wrong', whether it requires knowledge that the act is legally or, more likely, morally wrong;[1] and as to the burden of proof.[2] The Ingleby Committee thought that the age of criminal responsibility should be ~~abolished~~ raised.[3] The legislation, ~~however,~~ which followed their report did ~~not~~ embody this recommendation.

3. Historical Review of the Methods of Punishment and Treatment of Juvenile Offenders.

As it has been pointed out, if convicted of the offence the child became subject to the same punishments as an adult, and punishment was graded either by statute or judicial precedent according to the type of offence. Where courts dealt more leniently with children on account of their age it must be supposed that this was due to the discretionary element in sentencing allowed to the court rather than to something specifically granted in law. The effect of this was that children might expect to be treated compassionately, but could not receive any differential treatment from the law as of right.

The principle of equality before the law, which was an important common law principle, meant that juveniles were hanged, transported or imprisoned on the same rules and principles applicable to adults. Therefore at the beginning of the nineteenth century it was by no means

[1] Gorrie (1918) 83 J.P., 136 cited by J.D. McClean and J.C. Wood, op. cit., p. 178.

[2] G. Williams, op. cit.

[3] Report of the Committee on Children and Young Persons, 1960, Cmnd. 1191, para. 94.

considered unreasonable that children should be sentenced to death, transportation or imprisonment.[1] In 1800 a boy living in Etruria, a district in the Potteries, was convicted of stealing sixpence and was condemned to be hanged, a sentence that was eventually carried out.[2] The English Solicitor General, in 1785, noted that nine out of ten offenders hanged at that time were under twenty-one.[3] According to the Children's Employment Commission's Report, 1843, in Birmingham the moral state of the children is in the highest degree deplorable. Half of all the criminals are children under fifteen, and in a single year ninety ten-years' old offenders, among them forty-four serious criminal cases, were sentenced. Unbridled sexual intercourse seems, according to the opinion of the commissioner, almost universal, and that at a very early age.[4] In 1816, when the population of London was somewhat less than two and a half million, the prisons in the city held about 3,000 inmates under the age of twenty years - half of these being under seventeen, and some as young as nine or ten.[5]

[1] J.B. Christoph, "Capital Punishment and British Politics".

[2] E.J.D. Warrilow, "A Sociological History of the City of Stoke-on-Trent", 1960, p. 387. In 1908 the death penalty for persons under 16 was abolished; the age raised to 18 in 1948.

[3] L. Radzinowicz, "A History of the English Criminal Law", Vol. I, 1948, pp. 14, 523.

[4] Report of Commission of Inquiry into the Employment of Children and Young Persons in Mines and Collieries and in the Trades and Manufacturers. Second Report usually cited as "Children's Employment Commission's Report"; cited by F. Engels, "The Condition of the Working-Class in England", in Marx and Engels on Britain, 1962, p.235.

[5] E. DuCane, "The Punishment and Prevention of Crime", 1885, p.200.

However the Committee on Prisons and Penitentiaries (1811) considered of sending children to prison "highly inadvisable that young persons of twelve or thirteen should be exposed to the instruction of those who can initiate them in all the mysteries of fraud and villainy".[1] But the State's concern was with punishment, and if the child committed crimes then they, in the same way as adults, had to receive their just deserts. It took Parliament the first fifty years of the nineteenth century to change it and to commence the adoption of a policy which was directed toward reform rather than merely punishment.[2]

On the other hand in the middle of the eighteenth century a number of voluntary efforts were initiated. Sir John Fielding launched the scheme of sending juvenile offenders as servants on board the ships of the navy and in 1756; the Marine Society established for the reformation of juvenile criminals.[3] John Howard's well known book THE STATE OF PRISONS (1777) described the appalling state of the penal institutions in England as well as on the Continent, where not only juvenile offenders were to be found but also the children of adult inmates. This book inspired the creation of the Philanthropic Society, which was founded in 1788 to provide care and upbringing of poor children and the offsprings of convicted felons, and the juvenile delinquents. In 1806 the society became officially recognized and approved by an Act of Parliament and

[1] cited by P. Boss, "Social Policy and the Young Delinquent", p.22., 1967.

[2] R.S.E. Hinde, "The British Penal System 1773-1950", p.95, 1951.

[3] cited by P.Boss, op. cit., p.22.

reorganized into a triple institution in which "one department was a prison school for young convicts, another a manufactory for the employment of destitute boys, and the third a training school for pauper girls."[1]

Other voluntary organizations such as a farm colony at Stretton-on-Dunsmore in Warwickshire and the Society for the Improvement of Prison Discipline and for the Reformation of Juvenile Offenders were established in 1817. The latter organization grew out of the ministration effected by Elizabeth Fry and school started by her for "the children of the poor prisoners as well as the young criminals".[2] Some courts granted pardons to juvenile offenders instead of ordering imprisonment on condition that they placed themselves under the care of one of these charitable institutions. As the managers of these institutions had no legal power of detention, this depended on the offender's voluntary co-operation.

Up to the year 1838, all institutional treatment of juvenile offenders, apart from the houses of correction (Bridewells)[3] and common gaols, were private. In 1838 the State made the first attempt to differentiate between juvenile and adult offenders by passing the Parkhurst Act and establishing the Parkhurst Prison for the exclusive use of juveniles

[1] O. Nyquist, "Juvenile Justice", 1960, p. 134.

[2] O. Nyquist, ibid., p. 134.

[3] King Edward VI (about 1550) permitted Bridewell, an old royal palace in London, to be used as an institution for the reception of the "vagabond, idle and dissolute". The Bridewell became the model and the name giver of the so-called houses of correction.

between the ages of ten and eighteen years who had been sentenced to transportation.

The emphasis was more on discipline than anything else and the regime was very harsh. Mary Carpenter described the regime as such: "it attempted to fashion children into machines through iron discipline instead of self-acting beings".[1] In theory the Parkhurst system was an attempt to differentiate treatment between adult and juvenile and also began the process, which led away from use of punishment alone, toward reform of the juvenile delinquent through education, vocational training, and humanitarian interest and concern.[2]

The reformatory movement was beginning to get under-way slowly toward the middle of the nineteenth century, although the actual number of institutions was hardly more than thirty in number. But Parliament at that time was not yet persuaded of their value. Efforts however continued to convince Parliament the value of such institutions. The evidence which had been given to the House of Lords Committee had done a good deal to publicize the evils which the imprisonment of juveniles produced. Particularly the untiring pioneering work of Mary Carpenter on behalf of the reformatory schools, and her urgent plea for the State to interest itself in the use of such schools, reformatory schools for

[1] M. Carpenter, "Reformatory Schools for the Children of the Perishing and Dangerous Classes and for Juvenile Offenders", 1851, p. 321, cited by P. Boss, op. cit.

[2] P. Boss, op. cit., p.24.

those of the "dangerous classes" and industrial schools for the children of the "perishing classes",[1] made an important contribution to the eventual adoption of these measures by the State in 1854.

In 1853 a House of Commons Committee was set up to consider the treatment of juvenile offenders. The committee came out strongly in favour of a new system of treatment which would make use of the reformatory and industrial schools, support them financially out of public funds and bring them under government inspection. Parkhurst was abandoned as a juvenile prison in 1864, the main reason being that the Reformatory School (Youthful Offenders) Act, passed in 1854, urged the use of the many private reformatories of educational-correctional rather than punitive character which had sprung up all over the country.

This Act recognized the principle that offenders under sixteen should be committed for education to reformatory schools, with the proviso, however, that the juvenile offenders should spend a fortnight in prison before being transferred to a reformatory. (Punishment by imprisonment as a precedent for reformatory school treatment, was abolished in 1899).

[1] Mary Carpenter described perishing classes as 'those who had not yet fallen into actual crime but who were almost certain from their ignorance, destitution and the circumstances in which they were growing up, to do so, if a helping hand be not extended to raise them'; dangerous classes as those who had already received the prison brand, or if the mark had not yet been visibly set upon them, were notoriously living by plunder - who unblushingly acknowledged that they could gain more for the support of themselves and their parents by stealing than by working'.
M. Carpenter, "Reformatory Schools for the Children of the Perishing and Dangerous Classes and for Juvenile Offenders", 1851, cited by P. Boss, ibid., p. 24.

The entire control of the reformatories was given to the Home Office in 1860. Thus the State began to assume responsibility for the differential treatment of juvenile offenders, and began to think in terms of reform rather than punishment.

Industrial schools, on the other hand, catered for boys and girls of the 'perishing class' to prevent their final lapse into crime. Mary Carpenter found one of the first of this new type of institutions in 1858. In the seventies these residential institutions were supplemented by day industrial schools in the large cities. A system was thereby established which worked for several decades. Thus the strictly punitive attitude which was so common a feature at the commencement of the century gradually abated.

While in the reformatory schools discipline was often vigorous and repressive, industrial schools adopted the positive incentive of a mark system.[1] However this distinction became lost as time went by. In practice juveniles up to sixteen years of age were found to be in the industrial schools, and those between sixteen and twenty-one, were in the reformatory schools. The Children and Young Persons Act, 1933, removed the distinction between reformatory and industrial schools, which became known thereafter as "approved schools".

The Children Act, 1908, abolished the imprisonment of juveniles under sixteen, except in rare cases. What is very important, this Act gave

[1] M. Grunhut, "Penal Reform", 1948, p. 373.

full statutory force to the principles of treating a juvenile offender differently from an adult. In 1927 the Departmental Committee on the Treatment of Young Offenders published a report, and the recommendations of that committee led to the passing of the Children and Young Persons Act, 1933. So far as the treatment is concerned this Act granted new powers to commit a juvenile to the care of the local authority for the purpose of being boarded out with foster parents and to place under the supervision of a probation officer juveniles who had not committed an offence but were found to be in need of care or protection. Local authorities were required to provide remand homes as successors to the places of detention provided by police authorities under the Children Act, 1908, for juveniles remanded in custody while awaiting trial or while enquiries were being made after a finding of guilt or pending admission to an approved school. As was mentioned earlier approved schools were set up by the 1933 Act. The main framework of the 1933 Act has remained. The Criminal Justice Act, 1948, further restricted imprisonment for young offenders and abolished whipping. It also provided for short periods of discipline and training at attendance centres and detention centres. In 1902 an institutional programme of trade training, instruction, and drill work for juvenile offenders between sixteen and twenty-one years of age was introduced. The programme was initially carried out in a section of an old prison at Borstal, near Rochester, which had been transformed into a reformatory. The project proved successful and was consolidated in 1908 by the Prevention of Crime Act which provided that training of 'juvenile adult' offenders should take place in a Borstal Institution.

The Borstal system has gradually been built out on a larger scale with specialized institutions and classification centres.

The Report of the Departmental Committee on Corporal Punishment, 1938, recommended the abolition of this penalty for both juveniles and adults. In the case of juveniles it came completely to an end with the Criminal Justice Act, 1948.

Another indication of the gradually changing policy towards juvenile offenders comes from the use of probation, which emerged as a combination of binding over an offender with provision for his supervision. Its early origins derived from the practice of magistrates in Warwickshire in 1820's, who, instead of committing a juvenile offender to prison, might grant him a pardon on condition that he returned to the care of his parent or master to be more carefully supervised by him in the future. Twenty years later, as Recorder of Birmingham, Matthew Davenport Hill adopted this policy. However, Parliament at that time did not support this novel initiative. Therefore it again required voluntary effort to provide the much needed impetus. In 1876 the Church of England Temperance Society appointed a missionary worker to visit some of the Metropolitan police courts and attempt the reclamation of drunkards. Drunkenness featured to a considerable extent amongst offences committed by juveniles as well as adults. The State eventually endorsed the principle of probation by the Probation of First Offenders Act 1887, Even then provision for statutory supervision was left out. By the beginning of the twentieth

century the practice of placing on probation was common, but it was informal, and its use was confined to those courts where there were police court missionaries.[1] The Probation of Offenders Act, 1907, gave statutory effect to probation, and empowered the courts to appoint paid probation officers. The Criminal Justice Act of 1925 made the appointment of probation officers compulsory in all magistrates' courts. At the time of the Criminal Justice Act, 1948, the probation service had become a professional service.

There is now a wide range of sentences that a juvenile court may order. All these and the changes produced by the Children and Young Persons Act, 1969, will be described in due course.

II - THE ENGLISH JUVENILE COURT-HISTORICAL BACKGROUND

An important common law principle, the principle of equality before the law meant that everyone was liable to ordinary proceedings in ordinary courts irrespective of age. Accordingly until the middle of the nineteenth century there was no special provision for the trial of juveniles. A summary offence was tried by magistrates in petty sessions whilst an indictable offence had to be tried by jury at quarter sessions or assizes.

The juvenile court and the law it administers has evolved from the old common law. Although the juvenile court was not established in the law until the passing of the Children Act, 1908, its development was only a part of a much wider movement towards reform of the penal system and the criminal law and its administration which gathered

[1] R.M. Jackson, "The Machinery of Justice in England", 1967, p. 221.

force throughout the nineteenth century.

The first step which made possible the eventual setting up of a special court for the separate trial of juveniles was the passing of an Act in 1847 (Juvenile Offenders Act). In that year magistrates were given power to try juveniles under the age of fourteen on a summary basis for simple larceny instead of committing them for trial before a judge and jury at a higher court. This policy was widely extended by the Summary Jurisdiction Act 1879 with the result that offenders under twelve years of age could be dealt with summarily for all indictable offences, and offenders between twelve and sixteen could also receive summary trial in the case of such indictable offences as larceny and embezzlement. As a result of these reforms juvenile offenders no longer had to undergo trial by jury, and that summary jurisdiction usually involved milder sentences. On the other hand these changes merely simplified proceedings against juvenile offenders, who were still tried in the same courts and subjected to the same conditions as adults.

In various places, for example, in Liverpool, Manchester[1] and Birmingham[2], magistrates made informal arrangements for special sittings so that juveniles' cases could be kept separate from those

[1] W. Cavenagh, "Juvenile Courts, the Child and the Law", 1967, p. 12.

[2] P. Boss, op. cit., p. 32.

of adults. This practice became obligatory under the Children Act, 1908. Offenders under sixteen had to be tried in a juvenile court, which was a court of summary jurisdiction sitting in a different place, or at a different time from the ordinary sittings of the magistrates' court, thus avoiding bringing juvenile offenders into contact with adult offenders and undesirable persons. The importance of the Children Act, 1908, sometimes called the "children's charter", was that; it established the principle that juvenile offenders must be treated differently from adults. As one author writes this was a useful beginning, but no more than that.[1] What was required, but not provided at the outset, was an improvement in the way in which the courts were run and the use of procedures better adapted to the understanding of juveniles.

The juvenile courts were still the ordinary benches of magistrates. The next step therefore, was the special selection of magistrates to serve in them. The practice of selecting certain magistrates for this purpose began in the London area under the Juvenile Courts (Metropolis) Act, 1920. This Act provided that a juvenile court should be constituted of a metropolitan magistrate and two lay justices, one of whom should be a woman. The Home Secretary nominated the magistrates, taking into account their previous experience and their special qualifications for dealing with juvenile offenders. In 1927 the Departmental Committee on the Treatment of Young Offenders[2] recommended that juvenile court

[1] A.G. Rose, "The Struggle for Penal Reform", 1961, p. 86.

[2] Cmd.. 2831.

magistrates should be specially qualified for the work and should be specially selected for it, and the constitution of juvenile courts outside London should be governed by rules to be made by the Lord Chancellor. This and various other recommendations of the said Committee were embodied in the Children and Young Persons Act, 1932. A consolidating statute, the Children and Young Persons Act, 1933, with subsequent amendments, was the authority until the Children and Young Persons Act, 1969, came into force.

Before describing the juvenile court system and the changes taken place by the Children and Young Persons Act, 1969, it seems necessary to mention briefly the evolution of non-criminal jurisdiction of the juvenile courts.

Non-Criminal Jurisdiction of the Juvenile Court

According to a common law principle if the juvenile offender was acquitted, there were no further steps that a court could take however much the juvenile might be in need of care, protection or control. In 1861, however, the Industrial Schools Act, empowered courts to deal with neglected juveniles or those juveniles beyond parental control. The provisions for courts to deal with juveniles who were in need of care or beyond control were considerably widened by the Children Act, 1908. According to section 58 of this Act the juvenile courts were to have dealt with juveniles who were found begging; or wandering and having no parent, or a parent or guardian who does not exercise proper guardianship; or who were destitute; or who had parents who had

criminal or drunken habits or were in prison; or who were associating with reputed thieves or common prostitutes. As a result of the recommendations of the Departmental Committee, 1927, the Children and Youngs Persons Act, 1933, gave a wide meaning to the words "in need of care or protection". The definition was later widened by amending statutes. The effect of this was juveniles in moral danger; juveniles who had been abandoned, neglected or exposed; juveniles who had been assaulted; juveniles who were ill-disciplined and uncontrollable were all brought before the juvenile courts as being "in need of care or protection". These provisions were later extended by the Children and Young Persons Act, 1963, and the statutory description "in need of care or protection" was replaced by "in need of care, protection or control".

CHAPTER 3

THE ENGLISH JUVENILE COURT - PRESENT.

The Children and Young Persons Act 1969, has radically changed the juvenile court system. However, the present study is based on the system that was in existence before the 1969 Act. For that reason this chapter will be concerned with the description of the system which was in existence before the 1969 Act.

The English juvenile court is a court of criminal jurisdiction with an additional competence in non-criminal matters. It is the trial of offences which constitutes the major part of the business of the court, and in these cases it administers the ordinary law of the land, which is applicable to juveniles as it is to adults, although there are modifications of procedure. However, "it is in the less formal atmosphere of the juvenile court, the selection of magistrates with special qualifications, and the use made of methods available for dealing with young offenders that most scope has been given for differentiating between adults and juveniles".[1]

Apart from dealing with offenders the juvenile court also deal with juveniles who require "care, protection or control", or juveniles involved in school attendance cases. These are not criminal proceedings, and so there is no lower age limit, and no finding of guilt, though the court must first establish whether the grounds on which its intervention is sought can be substantiated before any decision about the methods of dealing with him can be taken. The procedure for dealing with non-criminal cases is in many ways similar to that for trial on a criminal

[1] W. Cavenagh, op. cit., p. 63

charge, though no question of criminal responsibility is involved. The application of treatment measures too are broadly similar, and in some cases, identical for both proceedings.

"Care, protection or control" covers the following cases, that is, children or young persons:[1]

1) either having no parent or guardian or, having such, he is not receiving such care, protection and guidance as a good parent may be reasonably expected to give, AND in addition, that he is falling into bad associations or exposed to moral danger; or that the lack of care, protection or guidance is likely to cause him unnecessary suffering or seriously to affect his health or proper development; or that he has been the victim of a sexual offence or an offence involving bodily injury, or lives in the same household as the victim or perpetrator of an offence of this kind against a juvenile; or he is beyond his parents' control.
2) who are truant and therefore not receiving education.[2] This procedure may be resorted to whether or not the parent has been prosecuted for failure to ensure his child's regular attendance.

[1]Children and Young Persons Act, 1933, s. 61, as amended by Children and Young Persons (Amendment) Act, 1952, s. 1. All previous definitions were swept away by the repeal provisions of Children and Young Persons Act, 1963, s. 2 (2). This section sets forth the present definition.

[2]Education Act, 1944, ss. 39 and 40, as amended by Education (Miscellaneous Provisions) Act, 1948, s. 11. In the case of vagrants whose way of life prevents their children from receiving a proper education, Children and Young Persons Act, 1933, ss 10 and 40.

In Care: Children and young persons may be "received into care" by the children's department without proceedings in court.[1] This can be done if the child is lost, or has been abandoned, or has no parents, or if they are prevented from looking after him properly by illness or some other cause; but it can be done only if intervention by the children's officer is necessary in the juvenile's interest. Such a person cannot remain in care after his 18th birthday, although he can continue to receive help voluntarily from the children's department. The distinction between "care, protection or control" cases and "in care" cases is that, in the former the juvenile comes before the court against its parents' will.[2]

I - THE CRIMINAL JURISDICTION AND THE PROCEDURE OF THE JUVENILE COURT

Criminal jurisdiction is exercisable over the age group of ten (inclusive) years to seventeen (excluding), while non-criminal jurisdiction can be applied to the whole range up to seventeen years. A "child" is a person under fourteen, and a "young person" is one who is fourteen years of age or over but under seventeen.[3]

[1] Children Act, 1948, s. 1.

[2] "In care" cases, if a parent objects within a month, the resolution lapses unless the children's department take successful steps to have it confirmed by a court. Children Act, 1948, ss. 1 and 2 as amended by Children and Young Persons Act, 1963.

[3] Children and Young Persons Act, 1933, s. 107 (1).

A limited description of the procedure is necessary in order to point out certain of the principles which underlie their use. The juvenile court was initially, and still is, part of the system of magistrates' court, i.e. a court of summary jurisdiction, though modified in certain respects as to the constitution and the procedure and also to the place where the court is held. These modifications are intended to protect the juvenile from contamination through contact with criminal courts and especially with adult offenders. Their object is "to prevent his being handicapped by youth and immaturity and to assist towards his reclamation where necessary".[1]

The magistrates for each petty-sessions area are required to elect from their number a panel of magistrates who are "specially qualified" to deal with juveniles, i.e. the juvenile court panel. The law does not prescribe what these special qualifications shall be, but the Rules made under the Justice of the Peace Act, 1949, laid down that no magistrate shall be a member of the juvenile court panel after attaining the age of sixty-five. It was pointed out,[2] in practice, in selecting persons for appointment as juvenile court magistrates, regard is paid to the needs of the juvenile courts and to any experience

[1] ibid., p. 62.

[2] C.J. Collinge, "Juvenile Courts and their Jurisdiction", Proceedings of the Fifth International Congress on Social Defence, Stockholm, 1958, p. 452.

which candidates may have had in education or in other work with young people, including their own children.

The juvenile court at each sitting consists of at least two magistrates, if they are lay magistrates (the stipendiary can sit alone as he can in his other courts), but not more than three magistrates selected from the juvenile court panel. One of the magistrates should, if possible, be a woman, and in emergency two women may sit alone.

The formal design and furnishings of the ordinary magistrates court are not considered suitable for the trial of juvenile offenders, nor is it thought desirable that they should be brought into contact with adult offenders. It is therefore laid down that the juvenile court must sit in a different building or room, or on a different day, from other courts. For the same reason the juvenile is to be separated from adult offenders while detained at a police station, going to or from court. If he is detained, provision is made for him to be detained in a remand home. A girl must be in the care of a woman.

Generally speaking the hearing before a juvenile court is less formal than is an ordinary magistrates' court. The court must explain what the proceedings are about in simple language to the juvenile offender and must allow his parents or a relative to help him in conducting his defence or make statements on his behalf, and if neither parent or relative is present and the juvenile is not legally represented, may go so far as to give hime some assistance with the proceedings. When a juvenile is

brought before a court, his parent or guardian may be required to attend, and shall be so required where the court thinks it desirable.[1] This provision underlines the principle of ~~paternal~~ parental responsibility. In the case of a child up to fourteen years of age, there is not right of trial by jury, but a young person, between fourteen and seventeen, has this right when charged with an indictable offence.

The juvenile court is not open to the public; press reporters may be present, but all other persons must be connected with the case or authorized by the court to be present. By this means unnecessary and undesirable embarrassment to the juvenile offender is avoided. This avoidance of publicity is taken further since there is also a prohibition on the publication by the press, sound or television broadcast of any identifying particulars by which the juvenile offender may be identified may not be published. The court or the Secretary of State may dispense with this prohibition but only if satisfied that to do so would be in the interests of justice.

The words "conviction" and "sentence" have ceased to be used, and instead there is a "finding of guilt" and an "order" made upon such a finding. A child under the age of ten years cannot legally be held guilty of any offence, though he may be found to be in need of care,

[1] Children and Young Persons Act, 1963, s. 25.

protection or control at any age up to seventeen.[1] Between the ages of ten and fourteen the prosecution must prove not only the child committed the crime but also, on evidence which is clear and beyond all possibility of doubt, that he had guilty knowledge that he was doing wrong.

Apart from these special procedural provisions, the trial is governed by the same rules as apply in the ordinary magistrates' courts. The ordinary rules of evidence, which are in many respects designed to protect accused persons from the possibility of prejudice, apply in juvenile courts as in adult courts. In short, a juvenile offender has to undergo trial for his offence.

II - SENTENCES AVAILABLE TO THE JUVENILE COURT

When the juvenile court has found the juvenile offender guilty, the procedure becomes less formal. After the finding, however, there is a requirement that except in trivial cases the court shall "obtain such information as to the general conduct, home surroundings, school record and medical history" as may enable it to deal with the juvenile offender in his best interests.[2] If this information is not already fully available a definite obligation is laid upon the court to consider the desirability of a remand for whatever enquiries or further enquiries are necessary. Without these reports, the magistrates would

[1] Children and Young Persons Act, 1963, s. 16.

[2] Summary Jurisdiction (Children and Young Persons) Rules, 1933, rule 11.

have no adequate means of knowing which form of treatment to order. In other words the juvenile court gets a comprehensive picture of the juvenile offender with whom it has to deal by the help of the report. The report cannot be produced to the court until after a 'finding of guilt' has been made, since they are not admissible as evidence relating to the trial of the charges.

The probation officer will report on home surroundings, on the kind of family and neighbourhood the juvenile comes from. Wherever possible the headmaster of the school will submit a report on educational attainment and behaviour, and there may be medical and psychiatric reports as well. Where the juvenile offender has already spent a period in a remand home before the magistrates decide on treatment, there will, in addition, be reports from the superintendent. The juvenile offender, and, if present, the parent or guardian, must be told the substance of anything in the report bearing on his character, conduct and home surroundings which is considered to be material to the manner in which he should be dealt with. If either desires to challenge these parts of the report by producing material evidence, the court must adjourn the proceedings for him to do so, and may require the attendance of the person who made the report. Full rights of appeal are provided both in respect of the finding of guilt and against the order made, on the same lines as in adult courts.

It has been considered that the younger an offender is, the better the prospects of reform and rehabilitation are likely to be. The principles

to be observed by all courts in dealing with children and young people are stated in the Children and Young Persons Act, 1933, s. 44 (1) as follows:

> "Every court in dealing with a child or young person who is brought before it, either as being in need of care or protection or as an offender or otherwise, shall have regard to the welfare of the child or young person and shall in a proper case take steps for removing him from undesirable surroundings, and for securing that proper provision is made for his education and training".

The care and consideration extended to juvenile offenders, which is evident from the modified procedures already mentioned, can be seen to a more marked degree in the variety of punishment and treatment facilities available to the juvenile court.

1. Absolute Discharge

An absolute discharge is not an acquittal, as is the dismissal of a case. It follows a finding of guilt but no further action on the offence is taken. This amounts to what the juvenile offender and his parents would probably describe as a 'let-off with a caution'.[1]

2. Conditional Discharge

It follows a finding of guilt, however, unlike absolute discharge that

[1] J. Watson, "The Child and the Magistrate", 1965, p. 153.

the magistrates may review their decision and impose some other sentence should the juvenile commit another offence within a given period. This order differs from a probation order in that (a) it involves no continuing supervision of the juvenile offender; and (b) only one condition - that the offender does not commit another offence - can be imposed. The court before making this order must explain to the offender in ordinary language that if he commits another offence during the period of conditional discharge he will be liable to be sentenced for the original offence. Conditional discharges may be for up to three years.[1]

3. Binding Over

The juvenile court may bind over the parent or guardian of the juvenile offender or the offender himself, in a sum of money which can be forfeited wholly or in part if he commits a further offence. This order may accompany an absolute discharge or be combined with some form of treatment.[2]

4. Fine

A young person cannot be fined more than £50 and a child cannot be fined more than £10 for any offence, whatever the maximum fine that may be imposed on an adult.[3] In the case of a child the order to make

[1] Criminal Justice Act, 1967, s. 52.

[2] Children and Young Persons Act, 1933, s. 55.

[3] Magistrates' Courts Act, 1952, ss. 20, 32 as amended by Criminal Justice Act, 1961, s.3.

the payment, whether it be a fine or costs, damages and compensation, must be, and in the case of a young person may be, imposed upon the parent or guardian unless the court is satisfied he has not conduced to the offence by neglecting to exercise due care of the juvenile concerned. While fines are punitive, costs, damages and compensation, are a means of reimbursing expenditure and refunding loss.

5. Probation (without a condition of residence away from home)

Probation order[1] involves a juvenile being placed under the supervision of a probation officer for a period of up to three years. It is the probation officer's duty to advise, befriend and assist the juvenile offender. Common requirements of a probation order are: to be of good behaviour and lead an industrious life; to notify the probation officer of any change of address; and to keep in touch with the probation officer. To establish a good relationship between the probation officer and the probationer is very important. The success of the probation depends very much on probationer's co-operation. It is for that reason that in the case of a young person, though not a child, the court may make a probation order only if he consents to it. The probation officer may apply for an order to be discharged at any time. If the court which made the order is satisfied that the juvenile has responded well it may grant the application. On the other hand if, without committing a further offence, the probationer commits a breach of a requirement of the order, the juvenile court may then deal with

[1]Criminal Justice Act, 1948, s. 3.

the probationer in one of the two following ways. If the court regards the matter as serious it may deal with him for the original offence in any way in which it might lawfully deal with him as if he had only just been found guilty of it. In that event the probation order is terminated. If on the other hand the juvenile court takes a less serious view of the breach, instead of dealing with the probationer for the original offence, it may punish him for the breach itself and allow the probation order to continue. If the probationer is found guilty of a further offence during the period of probation order, he may be dealt with not only for the new offence, but also for the one which the probation order was originally made.

6. Attendance Centre

These centres were authorised by the Criminal Justice Act, 1948. Such an order may be made for a total of up to twenty-four hours of which not less than one nor more than three hours must be spent at the centre on any one occasion. The juvenile must not previously have been sent to a borstal, a detention centre or an approved school. The centres are run by the police on behalf of the Home Office. They are available only in populous areas and only for boys between ten and twenty-one-years of age. The boys remain under firm discipline throughout the period of attendance which are usually held on Saturday afternoons. Those who fail to attend or who commit grave breaches of the rules of the centre may be brought back to court and dealt with for the original offence as though an attendance centre order had not been made.

7. Probation Hostel and Probation Home

These hostels and homes are for boys and girls over compulsory school age but under twenty-one at the time of the probation order is made who have the potential to respond to normal supervision by probation officers if they are removed from their home environment to the controlled environment of hostels or homes.[1] The period of stay cannot exceed twelve months from the date of the order. An essential difference between a requirement of residence in an approved probation hostel or home and a custodial sentence is that the offender is not in legal custody. From probation hostels probationers go out to ordinary daily employment, whereas probationers in probation homes initially have full-time training on the premises, but they commonly go out to ordinary employment towards the end of their period of residence.

8. Fit Person

This order can be imposed only for offences for which an adult could be imprisoned.[2] Sometimes the fit person is a relative or some other private person, but usually responsibility is placed on the children's department of a local authority. The fit person is vested with the same rights and duties as a parent, and has the care and custody of

[1]The Sentence of the Court, 1969, para. 34, H.M.S.O.

[2]Children and Young Persons Act, 1933, s. 57.

the juvenile offender. This order removes the offender from bad surroundings and, if the fit person is the local authority, gives him the benefit of the normal range of services provided by the local authority for children in its care. Such juveniles can be allowed to go home 'on trial' as soon as the Children's Department considers this wise. Unless revoked earlier, the 'fit person' may remain in existence until the offender attains the age of eighteen.

9. Detention in a Remand Home

Remand homes are more commonly used for the safe custody of offenders before or between court sittings and act as observation centres to help with reports for the juvenile courts. A juvenile offender may be committed to custody in a remand home if his offence is one for which the court could sentence an adult to imprisonment and the court considers that no other way of dealing with him is suitable and if a detention centre is not available.[1] The term must not exceed one month. No special provision is made for the offenders; they share the ordinary regime of the remand home. This sentence is now very little used as a penal measure.[2] J. Watson reports, "Staffs of the remand homes, some of whom advocated the abolition of the treatment...To run an establishment effectively, particularly a small one, which at one and the same time is a place of safety for deprived

[1] Children and Young Persons Act, 1933, s. 54.

[2] None such sentence imposed in Staffordshire and Stoke-onTrent in 1967 and 1968.

children and a place of punishment for juvenile offenders, must be extraordinarily difficult".[1]

Remand Homes could be used in the following circumstances:

1) As a "place of safety" for those believed to be in need of care, protection or control pending their appearance in a court.
2) Same group as in 1) after their appearance in a juvenile court, sent there under an 'interim order' during an adjournment.
3) Juveniles charged with an offence and not released on bail, pending their appearance in a juvenile court.
4) The same group as 3) after their appearance in a juvenile court "remanded in custody" during the period of adjournment.
5) Certain juveniles in groups 1) and 4) who have been committed to approved schools and have been sent to the remand home until vacancies in classifying schools or centres are found for them.
6) As a sentence imposed on a juvenile offender.

10. Detention Centre

Juvenile offenders can be sent to detention centres only for offences for which adults could be imprisoned. These centres were intended by Parliament to provide a sanction for those who could not be taught to respect the law by such milder measures as fines, probation and attendance centres but for whom long-term residential training was not yet

[1] J. Watson, op. cit., p. 246.

necessary or desirable.[1] They provide a short but sharp punishment, with hard work and brisk discipline. These centres are not available for those offenders under fourteen years of age, and the period of detention is normally not longer than three months. Detainees are eligible, subject to good conduct and industry, for remission of one-third of the period of the order. After release, he is subject to compulsory supervision for twelve months, with the sanction of recall for fourteen days or the unexpired portion of his time in the centre, whichever is greater. The Secretary of State accepted the recommendation of the Advisory Council on the Penal System that Moor Court in Staffordshire, the only detention centre for girls in England and Wales, should be closed and not replaced; the Council considered that girls were unlikely to be influenced beneficially by custodial treatment limited to the time available under a detention centre order. Moor Court ceased to be available for the reception of girls after 31st January 1969, and detention in a detention centre is no longer available as a method of treatment for girls and young women offenders.[2]

ii - APPROVED SCHOOL

A juvenile offender who has not attained the age of seventeen can be sent to an approved school for the offence for which an adult could

[1] "Penal Practice in a Changing Society", Cmnd. 645, 1959, para. 32, H.M.S.O.

[2] Report on the Work of the Children's Department, 1967-1969, para. 92, H.M.S.O.

be punished with imprisonment. It can also be made if the juvenile is found to be in need of care, protection or control. These schools are provided and managed by local authorities or voluntary organizations. The Home Office inspects and approves. In the case of "children" the length of the order is for three years or until four months after he ceases to be of compulsory school age whichever is the later; with a "young person" under sixteen it is for three years, and if he is older it is until he becomes nineteen. However it should be noted that the court cannot specify the length of time that will be spent in an approved school. The managers of each school are required to consider from time to time the progress made by each juvenile and to place him out on licence as soon as he has made sufficient progress. For two years after his release, or until he is twenty-one, whichever is the earlier, an approved school inmate is under the compulsory supervision of the managers, who can recall him to the school, but cannot detain him there when he has attained the age of twenty-one. At the end of the period of supervision it is open to the managers to provide voluntary after-care for a further period. They can cause him to be visited, advised and befriended and to give him assistance in maintaining himself and finding suitable employment. This is usually carried out either by a probation officer or a child care officer. The objects of approved school training are re-adjustment and social re-education of the juvenile.[1] Approved schools are different from each other in that

[1]The Sentence of the Court, 1965, para. 83, H.M.S.O.

they cater for specific age groups and impose differing regimes.

12. Recommendation of Borstal

Section 20 of the Criminal Justice Act 1948 (as amended by section 1 of the Criminal Justice Act 1961) makes a sentence of borstal training available for offenders aged 15 and under 21 convicted of an offence punishable with imprisonment. However, borstal sentence may ordinarily be passed only by a court of assize or quarter sessions. In the case of a juvenile court or an adult magistrates' court, the procedure after conviction[1] is, if they consider that a sentence of borstal training is appropriate, to commit the offender to quarter sessions under sections 28 or 29 of the Magistrates' Courts Act, 1952. Quarter Sessions may or may not act accordingly. Therefore this sentence cannot be considered at the disposal of the juvenile court. Accordingly it is excluded from the analysis of sentences and the various factors in sentencing.

[1] If a juvenile, who has been ordered to be sent to an approved school as a result of an offence, is fifteen or over and has absconded or is guilty of serious misconduct, a juvenile court or an adult magistrates' court may sentence him to borstal training. (Criminal Justice Act 1948, s. 72, as amended by Criminal Justice Act, 1961).

CHAPTER 4

THE ENGLISH JUVENILE COURT - FUTURE

1. Introduction

Since its establishment in 1908 the juvenile court system came under attack first from unofficial and then official sources. The ideology which underlines the system has been questioned, and radical changes have been put forward. Fundamentally the issue was the welfare principle; whether it should be the only, or at any rate the paramount, consideration. There was, however, disagreement among the advocates of change, as to the form which the substituted processes should take. Some, believing that the power to order deprivation of liberty, even in the child's own interests, is one which should only be entrusted to a court of law, would retain these children within the jurisdiction of the juvenile court but would deal with them under the non-criminal jurisdiction of the court. Some would establish non-judicial bodies with compulsory powers; others favour non-judicial bodies with power to arrange treatment by consent, leaving the juvenile and his parents to appeal to a juvenile court or similar body if he objected to the treatment proposed.

In England it was toward the end of the second world war that a member of the International Committee of the Howard League for Penal Reform, M. Grunhut suggested that the next step which should follow the establishment of a juvenile court system in any country should involve the transfer of such a system to an Administrative Youth Welfare Authority.[1] This would be a non-judicial body

[1] M. Grunhut, "Competence and Constitution of the Juvenile Court", Chapter II in 'LAWLESS YOUTH' A Challenge to the New Europe, 1947, Margery Fry, et. al.

making use of educational and welfare services for dealing with juvenile offenders. He considered that any country in which such services were already well developed could afford to convert from the juvenile court system to this new type of agency, but retain a judicial system in the background to deal with disputed cases in which questions of personal liberty were in issue. He stressed that in this new system it would be essential to work in close collaboration with parents, for without their co-operation the system could not function.

2. The Ingleby Report

So far as the official proposals are concerned it seems necessary to consider, first, the findings of the Committees of enquiry, for England and Wales. The committee to be referred to is the Committee on Children and Young Persons (England and Wales), 1960, often referred to as the Ingleby Committee. This Committee saw as a fundamental to the juvenile court system the difficulty of trying to meet the welfare needs of every juvenile offender from a seriously disturbed home through the criminal jurisdiction of the juvenile court. They said, "if the enquiries show seriously disturbed home conditions, or one or more of many other circumstances, the court may determine that the welfare of the child requires some very substantial interference which may amount to taking the child away from his home for a prolonged period. It is common to come across bitter complaints that a child has been sent away from home because he has committed some particular offence which in itself was not at all serious".[1]

[1]Report of the Committee on Children and Young Persons, 1960, Cmnd. 1191, para. 66, H.M.S.O.

However the Committee's final conclusion was that State intervention should continue to be dependent upon proof of certain specifically designed allegations since the maintenance of this basis is essential if State intervention is to be fitted into the general system of government and be acceptable to the community.[1] Having said this they recommended that a court provides the most effective machinery for doing this and that the juvenile court should be retained but in its dealings with younger children and with children whose primary need is for care or protection it should move further away from the conception of criminal jurisdiction.[2]

The minimum age of criminal responsibility should be raised to twelve (with the possibility of it becoming thirteen or fourteen at some future date); under that age a child would no longer be liable to criminal prosecution and conviction but they are to be dealt with under new non-criminal proceedings, i.e. care, protection or control proceedings.[3] It is pointed out that "the reasoning behind this change in procedures for this age group explains the addition of the word control for the long-used phrase care or protection since this provision would, in future, cover not only children who were neglected, endangered and beyond parental control, but also those who committed offences".[4]

[1] ibid.

[2] ibid., para. 77.

[3] ibid., para. 93.

[4] P. Boss, op. cit., p. 76.

3. The Longford Group

The Ingleby report has been followed by a report of a Labour Party study group headed by Lord Longford. It is called CRIME - A CHALLENGE TO US ALL, and published in 1964 (The Longford Group). One of the aims of the Group was to change the "judicial procedure which will take children of school age out of the range of the criminal courts and the penal system and treat their problems in a family setting, where necessary through Family Courts".[1] They proposed that delinquent children under thirteen would be referred by the school, police or other agency to the Family Service, a body which would incorporate the then children's departments and other welfare agencies, and which could arrange treatment for the child, in an institution if necessary.[2] The emphasis would be on close co-operation with the child's parents on a voluntary basis and their agreement to any form of treatment would be essential. Where agreement with the parents was not possible, the case would be brought before the Family Court, a judicial agency newly established, which would handle these cases as well as a wide range of domestic and matrimonial matters. This Court would make an order giving the required powers to the Family Service. It would also deal with juveniles over thirteen but under school-leaving age in the same way as younger children, and also deal with juveniles up to the age of eighteen in a non-criminal context. It was also envisaged a young people's

[1] "Crime-A Challenge to Us All", Report of the Labour Party's Study Group, June 1964, pp. 1 and 23.

[2] ibid., p. 25.

court for those between eighteen and twenty-one.[1]

4. "The Child, The Family and the Young Offender"

The Labour Government White Paper, "The Child, the Family and the Young Offender", which was published in August 1965, based substantially on the same philosophy of the Longford Group. It was proposed that the juvenile court system should be abolished and its place taken by a new body, the family council.[2] The family council's function would be to deal with offences as well as non-criminal cases. The council would try to reach agreement with the parents on what treatment should be applied. In the case of serious offences, or if the facts were in dispute or agreement on treatment could not be reached the issue would be passed to a family court. Magistrates selected for their capacity to deal with juveniles would sit in family courts. Offenders between sixteen and twenty-one would come before a young offender's court.[3]

Proposals produced critical reaction from many quarters, particularly from magistrates and probation officers. Particularly they objected that a child may be deprived of his liberty when for instance, he is sent away for treatment to a residential establishment, and his parents may be deprived of his care, through executive action outside of the due process of law. In a juvenile court the rights of juveniles are

[1] ibid., p. 26.

[2] "The Child, the Family and the Young Offender", August 1965, Cmnd. 2742, para. 11, H.M.S.O.

[3] ibid.

safeguarded, but there is no guarantee that this would be the case in the family council. For example, the National Association of Probation Officers said, "the association regrets that the establishment of family councils would involve the abolition of the juvenile court, and re-asserts its belief in the importance of preserving the judicial principle".[1]

Another criticism came from one of the most influential supporters of the juvenile court system. W. Cavenagh (herself a juvenile court magistrate) and Sparks wrote shortly before the White Paper was published, and criticized the proposals of the Longford group and Kilbrandon Committee (which had earlier recommended the abolition of the juvenile court in Scotland) because both involved "a shift from the concepts of crime, punishment and responsibility, to a concept based wholly on the need of the offender. In practice, however, the concepts of criminal responsibility and punishment have an important function: for they <u>limit</u> what can be done to offenders, in the interests of justice and individual liberty".[2]

5. <u>"Children in Trouble"</u>

Having taken into account the criticisms, the Government published a

[1] cited by T. Morris, "Struggle for the Juvenile Court", in <u>New Society</u>, 10th February, 1966, p.18.

[2] W. Cavenagh and R. Sparks, "Out of Court?", in <u>New Society</u>, 15th July, 1965.

second White Paper, called "Children in Trouble",[1] in April 1968. By this White Paper family councils were dropped, family courts were not mentioned, and the juvenile courts were retained though with greatly restricted jurisdiction. It was proposed that the prosecution of children aged ten and under fourteen would cease, and action to deal with offenders and to help their parents would be taken, where possible, on a voluntary basis. If a child commits an offence and his parents are not providing adequate care, protection or guidance, or the offence indicates that he is beyond parental control, it would then be possible to take him before a juvenile court as in need of care, protection or control.[2] In other words the commission of an offence in itself would cease to be a ground for bringing a child to court. Prosecution would be available for those between fourteen and seventeen, but only on the authority of a summons or warrant issued by a juvenile court magistrate in accordance with specified criteria.[3] The police and the local authority children's department would consult together before taking a decision, and social enquiries would be made by children's departments.[4]

[1] 1968, Cmnd. 3601, H.M.S.O.

[2] ibid., paras. 14 and 15.

[3] ibid., para. 16; Appendix A., 1.

[4] ibid, para. 17.

Abondment of family councils and retention of the juvenile court "though with greatly restricted jurisdiction" were welcomed by the Magistrates' Association; they considered it as a great improvement on the earlier one.[1]

6. The Children and Young Persons Act 1969

The Children and Young Persons Act 1969 amended the law relating to the jurisdiction and procedure of the juvenile courts and the treatment available for children in trouble. This new Act retained the juvenile court, though with reduced powers.

The most radical change in the jurisdiction is that the new Act provided the consequences of a criminal act by a child i.e. under the age of fourteen, shall no longer be decided by a prosecution.[2] Instead a child may be brought to court in "care proceedings". A child or young person (any boy or girl under seventeen may be the subject of care proceedings)[3] may be brought before a juvenile court if any of the following conditions is satisfied:

a) Neglect or ill-treatment;

b) Probability of either, arising from a finding by a court that another juvenile, a member of the same household, has been neglected or ill-treated;

c) Exposure to moral danger;

d) Beyond parental control;

e) Truancy from school (being of compulsory school age);

[1] The Magistrates' Association, Forty-Eigth Annual Report, 1967-1968, Appendix V., para. 4.

[2] Same footnote 1 in the Abstract.

[3] "The Sentence of the Court", Supplement in the Children and Young Persons Act 1969, 1971, p. 4, H.M.S.O.

f) "Is guilty of an offence; excluding Homicide";

AND ALSO "that he is in need of care or control which he is unlikely to receive unless the court makes an order under this section in respect of him...."[1]

All these primary conditions, including (f) which is the offence condition, are subject to a fulfilment of the over-riding condition which comes at the end: AND ALSO "that he is in need of care or control which he is unlikely to receive unless the court makes an order". In other words under this section a child under prosecutable age cannot be found in need of care or control simply because he has committed an offence. All the primary conditions, including (f) the offence condition, must be supplemented by a finding that the over-riding "need-for-a-court-order" condition is satisfied. In general, the proof of a case under (f) will consist of two stages. The first is proof of the alleged offence, unless the juvenile admits it. The second, which will not arise unless the offence condition is satisfied, is proof of the need for a court order. The fact that a juvenile under seventeen is of prosecutable age is not a bar to bringing care proceedings in which an offence other than homicide is alleged. Section 1 of the Act applies to all juveniles under the age of seventeen, except that an offence cannot be alleged in the case of a child under ten, who is below the age of criminal responsibility. The new Act did not raise the age of criminal responsibility, what it did was to provide that the

[1]Children and Young Persons Act 1969, s. 1.

consequences of a criminal act by a child i.e. under the age of fourteen, shall no longer be decided by prosecution. Instead a child may be brought to court in "care proceedings".

While it is possible for all juvenile offenders to be dealt with by "care proceedings", the new Act does not prohibit altogether the prosecution of "young persons". The criminal jurisdiction is retained for offenders aged fourteen but under seventeen subject to certain conditions being satisfied before a prosecution is launched. Before a prosecution can be brought the police must certify that it would not be adequate for the case to be dealt with by a parent, teacher or other person, or by means of a caution from a constable or through the exercise of the powers of a local authority (voluntary reception into care) or other body not involving court proceedings.[1] Two further conditions must be satisfied (A) the local authority must be informed and observations invited (this requirement may be disregarded in the more serious cases) and (B) the offence must be of a category prescribed by regulations. No regulations have yet been made but they will probably follow the lines of the White Paper "Children in Trouble" which suggested that in the cases (a) the offence is homicide or some other serious offence, (b) the offence is of a type causing much public concern, (c) the young person appears not to be in need of sustained support or treatment but the nature of the offence and home circumstances suggest that a court appearance

[1]Children and Young Persons Act 1969, s. 5 (2).

and a simple deterrent (e.g. a fine) would be appropriate, (d) the offence is a traffic offence carrying a likelihood of disqualification from driving, (e) the offence was committed in company with some other person who is to be prosecuted.[1]

Juvenile courts will have powers under the new Act s. 1 (3) to make five kinds of order in care proceedings.

(a) an order requiring the parent or guardian to enter into a recognisance to take proper care of a child or young person and exercise proper control over him; or

(b) a supervision order (under which a child normally remains at home, except for short periods); or

(c) a care order (under which a child is taken from home, normally into a community home or foster home); or

(d) a hospital order (i.e. supported by the certificates of two doctors, as laid down in the Mental Health Act, 1959); or

(e) a guardianship order (similarly supported)

The main effect of this new selection of possible orders is that the juvenile court can no longer specify a particular kind of institution. Instead of magistrates laying down precisely what kind of treatment a child or young person shall get, the social workers dealing directly with him will, within the limits of the order, make this decision. Supervision orders may last for up to

[1]L. Goodman, "English Juvenile Courts - Recent Changes in Legislation", International Journal of Offender Therapy, 1970, Vol. 14, No. 2, p. 107.

three years, care orders generally up to the age of eighteen. The social worker can ask the court to revoke the order. A child or his parents can also ask for the court to revoke an order. Also a social worker can, while an order still runs, send a child to live at home. The care order replaces all custodial sentences and is designed to give local authority to whose care the juvenile is committed a great deal of flexibility of treatment.

Such a system of sentences was criticised long before the new Act came into force, on the grounds that juvenile courts deal with vast numbers of infractions of the law - behaving noisily in public places, riding bicycles without lights - which are not necessarily indicative of any need for social welfare, but are probably most effectively checked by sharp reminders, small fines, and the payment of the costs of damage.[1]

In criminal proceedings juvenile courts will have the power to make the same orders as in care proceedings, plus:

(a) absolute or conditional discharge

(b) fine of up to £50

(c) payment of damages or compensation

(d) detention centre or attendance centre orders until intermediate treatments are available.

[1] D.J. West, "The Young Offender", 1967, p. 217; see also, W. Cavenagh and R. Sparks, "Out of Court?" in New Society, 15th July 1965.

The 1969 Act has brought together criminal and care proceedings in a single code, while retaining the possibility of criminal proceedings against "young persons". The philosophy behind that part of the Act which deals with care proceedings is the idea that the requirement to have regard to the welfare of the juvenile should, in the case of children under fourteen, become a paramount consideration. Consequently where the child's welfare does not require a court order, the court cannot have power to make one. So far as the provisions on criminal proceedings against young persons are concerned, a partial modification of the idea that the welfare of the juvenile shall be the paramount consideration. It has already been pointed out that the Home Secretary would impose restrictions on prosecution by regulations. The aim of these regulations is that where no compulsory measures are required in the interests of the young person's welfare, a prosecution may proceed if it is considered that the gravity of the offence is such as to make prosecution desirable, or that the regulatory effect of a fine or other minor sanction is required. On the whole the aim of the new Act is where possible to treat and help juveniles, rather than to punish them. It is regarded as being the most far-reaching Acts of Parliament amending the law in relation to deprived and delinquent children that has been past in this century.[1]

[1] J. Watson, "The Juvenile Court - 1970 Onward", 1970, p. 77.

CHAPTER 5

THE AIMS OF CONTEMPORARY SENTENCES

I - THE AIMS OF SENTENCES IN GENERAL

It was already noted that when it comes to making an order (sentencing stage), juvenile courts were required to have regard for the welfare of the juvenile offender. In other words the aim is to give them what they need, rather than what they deserve. This "welfare" requirement makes considerable inroads into the theory that punishment should be related to the gravity of offence. It is therefore necessary to consider the various purposes of contemporary sentences before dealing with the "welfare" issue.

Even in the contemporary sentencing the purely punitive element still has to be reckoned with, but it is by no means all. The contemporary aims could be classified as follows:

A - Retribution

B - Deterrence

C - Protection

D - Reformation

However, in practice, these aims may be intermingled. Several research studies have revealed how divergent are the aims of different courts and judges in sentencing offenders.[1] Most sentences can be

[1] E. Green, "Judicial Attitudes in Sentencing", 1961; R. Hood, "Sentencing in Magistrates Courts", 1962; H. Mannheim et.al., "Magisterial Policy in the London Juvenile Courts", British Journal of Delinquency, Vol. VIII, Nos. 1 and 2.

justified by appealing to at least two of the aims. This is called "ambiguity of aim".[1]

In the words of the Streatfield Committee "the need to deter or reform the offender, the need to protect society and the need to deter potential offenders may in a particular case be conflicting considerations".[2] For example, fines can be regarded both as retribution and as general and individual deterrents. H. Mannheim says that "no penal philosophy can today be based upon one single idea, be it retribution, prevention or whatever; rather will it be a somewhat dubious mixture of heterogeneous elements".[3]

On the other hand it is difficult to be sure whether a technique is functioning as an individual deterrent or whether it is reforming the offender. For example, it is generally assumed that the aim of probation is to reform: but in a survey some young males seemed to regard the prospect of being put on probation as more of a deterrent than a fine.[4] Moreover, not all the measures at the disposal of the juvenile court can be properly described as "reformation" oriented.

[1]N. Walker, "Crime and Punishment in Britain", 1965, p. 142.

[2]Report of the Interdepartmental Committee on the Business of the Criminal Courts, 1961, Cmnd. 1289, para. 262, H.M.S.O.

[3]H. Mannheim, "Some Aspects of Judicial Sentencing Policy", in The Yale Law Journal, May 1958, Vol. 67, No. 6, p. 971.

[4]H.D. Willcock and J. Stokes (1968), "Deterrents and Incentives to Crime among Youths aged 15-21 years," 1963, part 2, Table 50, Government Social Survey.

The Attendance Centre, for example, or the Detention Centre have also a punitive function. Approved Schools, in spite of all that is said about their re-educational function, are at times used with a punitive aim.[1]

1. Retribution

Historically retribution was one of the main aims of penal methods. The belief in its importance is well established among the public as well as in British jurisprudence.[2] The ancient meaning was close to the idea of vengeance but mixed up with the notion of restoring the balance in society by proportionate punishment of the offender - a kind of judicial "tit-for-tat".[3] It was the infliction of an appropriate amount of suffering or loss intentionally inflicted because of his offence. If it was inflicted by the aggrieved person without invoking the law it was called "retaliation".

The modern notion is that punishment should be proportionate to the offence and the culpability of the offender. Courts must punish in proportion to the individual responsibility of the wrongoder, taking

[1] P.D. Scott, "Residential Treatment of Juvenile Delinquents", in British Journal of Delinquency, 1951, Vol. 2.

[2] "English Law and the Moral Law", 1953, p. 93; Lord Longford, "The Idea of Punishment", 1961; H.L.A. Hart, "Punishment and Responsibility", 1968.

[3] J.E. Hall Williams, "The English Penal System in Transition", 1970, p. 14.

into account various factors such as age, previous offences, mental condition etc. Herein lies the origin of the tariff system of punishment which still lies at the heart of particularly adult court sentencing. Retribution focusses attention upon the offence rather than the offender. Punishment should fit the crime or that the offender should get his just deserts.[1] According to one writer while retribution and expiation can play no positive part in sentencing policy, it must be admitted that for the foreseable future sentencing will continue to be carried out in a retributory context.[2]

The demunciatory aspect of retribution was emphasised by Lord Denning in the expression of his belief that the ultimate justification of any punishment was not that it was a deterrent but that it was the emphatic denunciation by the community of the offence.[3] A judicial example of this theory in practice may be observed in the case of R. v Mitchell,[4] where the apellant had thrown bleach into the eyes of pursuers attempting to apprehend

[1] In the case of R. v Liddell [1965] Crim. L.R. 664, where the appellant, aged 48, while under the influence of drink, stole propoerty to the value of £15 from a shop. He had sixteen previous convictions for dishonesty and three for drunkenness. The court observed that his chances of being cured were just as good in prison as on probation with a condition of residence at a hospital, but that in addition he deserved to be punished.

[2] W.J.H. Sprott, "Sentencing Policy", in The Sociological Review Monograph, No. 9, University of Keele, 1965.

[3] The Report of the Royal Commission on Capital Punishment, 1949-1953, Cmnd. 8932, para. 53, H.M.S.O. F. Stephen, "History of the Criminal Law in England", Vol. II, Ch. XVII, 1883, pp. 81, 82.

[4] R. v Mitchell [1965] Crim. L.R. 319.

him, the court, upholding a sentence of ten years' imprisonment, observed that it was a horrible offence and that the sentence had to mark public revulsion.

2. Deterrence

One of the principal aims of punishment for crime is to deter the individual and also others who may be minded to commit similar offences and hence to prevent further crime. Individual deterrence must be distinguished from general deterrence.

The aim of "individual" deterrent punishment is to instill in the individual offender who is before the court a regard for the law because of his fear of the punishment which will follow if he commits another offence of the same kind. "A deterrent sentence is not meant to fit the offender it is meant to fit the offence" said Mr. Justice Ashworth in the Appeal Court.[1] "When meting out a deterrent sentence it is idle to go into the background of each individual" declared the Lord Chief Justice, Lord Parker.[2] The aim of conditional discharge might be described as entirely individual deterrence of a mild kind.[3]

[1] P. Pringle, "Is this steamroller justice?", in The Sunday Times, 18th October 1970.

[2] ibid.

[3] N. Walker, op. cit., p. 143.

The aim of "general" deterrent punishment is to deter other persons who might be minded to commit similar offences.[1] General deterrence considers the deterrence of the public at large, while individual deterrence looking to the individual offender before the court. It has been shown that the Court of Appeal Criminal Division in England has supported a general deterrent approach for robbers and for public officials and police officers convicted of fraud or dishonesty.[2]

There are limitations of deterrent punishments. Deterrent sentences have little effect on some type of criminals. For example, the threat of punishment is more likely to be effective as a deterrent in the case of property crimes than in the case of crimes of a more impulsive nature, such as violence and sexual crimes. In September 1944 when the German authorities deported the whole of the Danish police force, for seven months Denmark had no police force. The result was a sharp rise in crimes of dishonesty, robbery and crimes against property, but the figure for murder, sexual crimes and crimes of violence remained fairly stable.[3] Apart from this punishment is more likely to deter some individuals than others, depending on their social and economic status, family background, educational level etc. Another important factor in deterrence is the risk of being caught and

[1] In R. v Vincent (1966) Crim. L.R. 694, which involved stealing from a coin box in a telephone kiosk, an appeal against sentence of eighteen months' imprisonment was dismissed on grounds of the appellant's Record and the prevalence of this type of offence.

[2] D.A. Thomas, "Principles of Sentencing", The Sentencing Policy of the Court of Appeal Criminal Division, 1970.

[3] S. Hurwitz, "Criminology", 1952, p. 303. In England the strike of the Liverpool police in 1919 was accompanied by widespread looting.

swiftly dealt with. Lord Parker of Waddington said that "it was a sound principle that the certainty of punishment was a greater deterrent than its severity".[1] He thought too much attention was now paid to the reform of the prisoner. Opposing to this view "we need to set in motion some radical change within each criminal, which will make the social tensions inseparable from deterrent punishment a little necessary. Thus deterrence should lead naturally to the consideration of ways of achieving reformation".[2]

Report of the Committee on Children and Young Persons, 1960, gave a recognition to the principle of deterrence by stating, "Although it may be right for the court's action to be determined primarily by the needs of the particular child before it, the court cannot entirely disregard other considerations such as the need to deter potential offenders. An element of general deterrence must enter into many of the court's decisions and this must make the distinction between treatment and punishment even more difficult to draw."[3]

[1] "The Times", 28th January 1960, Parliament news.

[2] H. Jones, "Crime and the Penal System", 1965, p. 143.

[3] The Ingleby Report, 1960, Cmnd. 1191, para. 110, H.M.S.O.

3. Protection of the Public

One of the aims of sentences is to protect public from the danger of repetition of the offence. This involves the removal of the offender from society for a period, as a means of public protection. Here the aim is to eliminate the offender temporarily from the community and by doing so to protect the public. For example, while in a penal institution, the offender cannot be committing offences against the public: - he is effectively prevented from doing so. Some writers describe this as incapacitation.[1]

In cases like sexual assaults on young children, it would be acceptable not to release the offender immediately. The Richardson gang and the Kray brothers do represent a real threat to society, and the public is entitled to be protected from them. However, protection of public by imposing 42 years in the case of Blake cannot be justified with this aim. Mr. Justice Hilbery said with regard to Blake: "The sentence had a threefold purpose. It was intended to be punitive, it was designed and calculated to deter others and it was meant to be a safeguard to this country".[2] But the danger to the country of such a person being able to repeat his offence is nil, and the sentence was seen by many as retributive.[3] Same sentence, however, is regarded as a living death sentence imposed for deterrent reasons.[4]

[1] P. Tappan, "Crime, Justice and Correction", 1960, p.255; A. Jones op. cit., p. 144, uses the word "prevention"

[2] R. v Blake, [1962] 2 Q.B. 377, at p. 383.

[3] J.E. Hall Williams, op. cit., p. 13.

[4] P.J. Fitzgerald, "Criminal Law and Punishment", 1962, p. 209.

5. Reformation

The reform of the offender is widely canvassed in modern times as one of the principal aims of the penal law. Reformation is the correction and re-education of the offender, and thus ultimately re-establishing him in the community. Reformative techniques are intended to achieve this by removing or reducing the offender's motives for offending, or by strengthening his self-control, for example, by placing him on probation. In other words, the penal system is seen as having a technical task of rehabilitation to perform: the individual offender's adjustment to society has gone wrong and must be repaired.

The idea of reform of the offender developed by the positive school in criminology, founded by Lombroso, and achieved its most thorough going advocacy in the writings of Enrico Ferri. Its recent British supporter writes, "the legal process for determining who has in fact committed certain actions would continue as at present; but once the facts had been established the only question to be asked about offenders would be: what is the most hopeful way of preventing such behaviour in future".[1] Opposing to this view it was said ".... the other objectives of punishment must also be pursued, and sometimes they will outweigh the arguments for reform. ..... despite the claims of certain criminologists, reform of the offender cannot be exclusive goal".[2] The two strong views against reform are:

[1] B. Wootton, "Social Science and Social Pathology", 1959, p. 251.

[2] T.E. Hall Williams, op. cit., p. 13.

1. The lack of necessary knowledge about how to achieve reform.
2. The nature of the offence may be too trivial for reform of the offender to be seriously considered.

Grunhut states that reformation of the offender is no more seen in isolation like a prisoner in his cell, but on "adjustment", a sociological concept which includes man's relationship to his environment; a two-way process of mutual adaptation between the individual and his personal surroundings.[1] However some sentences not only alter the attitudes of an offender but also provide him with a prophylactic environment for a period during which the offender will "settle down" or "grow out of it". Probation homes and hostels, and committal to the care of local authority as a result of "fit person" order are consistent with this. This aim is not considered as a separate aim from "reformation" but as an extension of it and accordingly it is described here. Reformation (rehabilitation) has been supported as a "last chance" approach for habitual petty criminals by the Court of Appeal Criminal Division.[2]

[1] M. Grunhut, "Juvenile Offenders Before the Courts", 1956, p. 122.

[2] D.A. Thomas, op. cit.

Before ending the description of the aims of contemporary sentences it is worthy to give a couple of examples of savage sentencing practices, which do not fit any of the aims mentioned above, but still exist in some other parts of the world.

A Turkish civil servant, Sadi Alkilic, wrote an essay in an Istanbul newspaper in 1962. The essay was described as being a naive un-original exercise in utopian socialism.[1] The author was not in trouble with the law before. For writing this essay he was sentenced to six years, two months imprisonment, followed by two years' exile plus loss of civil rights for life. The sentence was upheld by the Turkish Court of Appeal, Criminal Division.

In the United States of America, in 1968, the day Martin Luther King was buried, five young negroes had set ablaze the door of the Ku Klux Klan meeting hall. The fire did about 25 dollars worth of damage. None of the offenders were in trouble with the law before. However, each of them was sentenced to twelve years at hard labour, and the North Carolina's Court of Appeals upheld the sentences.[2]

[1] K. Kyle, "These words meant six years in a Turkish gaol for their author", The Guardian, December 1968.

[2] Newsweek, June 16th, 1969.

II - THE AIMS OF SENTENCES AT THE DISPOSAL OF THE JUVENILE COURT

All the courts are faced with the problem of achieving a multitude of purposes of sentences, some of which conflict one with the other and reflect the deep contradictions within society in regard to the offender. Another major difficulty, as far as an analysis of this kind of motivation is concerned, is that there is no obligation upon the sentencer to give cogent reasons for the sentence, and one is left simply with the sentence itself and any comments that the chairman makes in explanation of the sentence. So far as the juvenile court is concerned, although the welfare of the juvenile remains an important consideration, the possibility of deterrence, retribution and protection of society cannot be excluded since it is a criminal court, though modified to a large extent. Closely connected with this not all the sentences at the disposal of the juvenile court can be properly described as reform oriented (treatment).

If the magistrates decide to take no further action in dealing with a juvenile offender they discharge him absolutely or conditionally. It has been suggested that it would be better to call an absolute discharge an unconditional one, so as to avoid the impression that the offender had been acquitted.[1] N. Walker, as it was pointed out earlier, regards conditional discharge as entirely individual deterrence

[1] cited by T.E. James, "Child Law", 1962, p. 153.

of a mild kind. However, M. Grunhut observed that discharges may open the way for certain positive efforts. These sentences may be used sometimes as an opportunity for bringing educative influences to bear on the offender.[1] However he admits that the different motives which lead magistrates to resort to both discharges give them an ambiguous character.

Fine can be used both as a deterrent and also in a retributive way.[2] Therefore it is generally regarded as a punishment. However, one author claims, "because it is less penal than imprisonment, fining can also be regarded as rehabilitative in the sense that fines often seem to be imposed by the court and accepted by the offender, as a quid pro quo for future good behaviour".[3] However, N. Walker states "probably the only measure which cannot be anything but a mild deterrent is fine".[4] Fine may be ordered in the case of "young persons" and must be ordered in the case of "children", to be paid by the parent or guardian instead of the offender. This is an important exception to the fundamental principle of the sentencing system which is "the sentencer can deal only with the offender".

[1] M. Grunhut, "Juvenile Offenders before the Courts", p. 70.

[2] "Alternatives to Short Terms of Imprisonment", Report of the Advisory Council on the Treatment of Offenders, 1957, para. 24, H.M.S.O.

[3] K.M. Devlin, "Sentencing Offenders in Magistrates' Courts", 1970, p. 61.

[4] N. Walker, "Sentencing in a Rational Society", 1971, p. 90.

Probation is usually regarded reformative in the sense that its aim is the ultimate re-establishment of the offender in the community.[1] But in addition there is the element of discipline which, involving the submission of the offender while at liberty to the supervision of the probation officer, falls a long way short of "letting-off", and this has to be made clear to the offender. Also, it cannot be ignored that there already exists in the terms and requirements of the probation order a punitive element which is over and above the conditional element that in the event of a breach of probation or the commission of a further offence the offender may be brought back and dealt with for the original offence. As it was pointed out earlier in this chapter in Willcock's sample fine seemed to be regarded as a less formidable deterrent than probation. The young adults between 15 and 21 in this sample regarded the prospect of supervision by someone whom they regard as representing authority and which may be last as long as two or three years more unpleasant than the loss of one or two weeks' wages (few of the youths expected the fine to be more than £25, and some expected much less). However, probation cannot operate wholly as a deterrent even if Willcock's survey suggests that it can function in a hostel or probation home, it seeks to provide the offender with, as Walker put it, "a prophylactic environment for a period during which he will settle down or grow out of it".[2]

[1] The Sentence of the Court, A Handbook for Courts on the Treatment of Offenders, 1969, para. 31, H.M.S.O.

[2] N. Walker, "Crime and Punishment in Britain", 1965, p. 143.

Attendance centre is regarded as both deterrent and reformative in aim.[1] Its punitive effect on juveniles is its nuisance value, having to attend on Saturday afternoons. The contact with authority is also an important factor.[2]

Detention in a remand home as a sentence is at the disposal of the juvenile court but this aspect of it is totally ignored by Stoke-on-Trent and Leek magistrates. According to them remand home is a place for remand only. This sentence is punishment oriented too. However, official view claims "the disciplined environment and the break with familiar surroundings may improve the offender's conduct, but time does not allow any serious training".[3] A remand home is a "place of safety" for deprived juveniles, a "place for remand in custody" for offenders, and at the same time a "place of punishment" for juvenile offenders. It is not difficult to understand why this particular place was not used as a "sentence" by Stoke-on-Trent and Leek magistrates. After all, this particular sentence could be imposed if there is no detention centre available in the area, and in the case of those between 14 and 17 there was a detention centre available in Stoke-on-Trent, and in Leek.

[1] K. Devlin, op. cit., p. 100

[2] T.E. James, op. cit., 142; see also Report of the Committee on Children and Young Persons, Cmnd. 1191, 1960, para. 288, H.M.S.O.

[3] The Sentence of the Court, 1969, para. 77, H.M.S.O.

Committal to the care of a fit person removes a juvenile from bad surroundings and, if the fit person is the local authority, gives him the benefit of the normal range of services provided by the local authority for children in its care. Therefore this sentence can be regarded reformative and prophylactic.

There is an increasing tendency to combine the sentences, which involve deprivation of liberty which in essence are a deterrent measure, with techniques which are intended to reform the offender. Particularly juvenile institutions are claimed mainly or even exclusively, as in the case of approved schools, that they are not penal establishments at all, but educational institutions. Of course this does not represent necessarily the view of inmates who may regard them as deterrents.

According to the official view detention centres provide a means of treating young offenders for whom a long period of residential training away from home is not yet necessary or justified by the offence, but who cannot be taught respect for the law by such non-custodial measures as fines or probation.[1] The outstanding feature of a detention centre, at least in its present state, is that its intention is primarily deterrent. W. Cavenagh writes that detention centres are tending to move away from their rather repellant and un-

[1]The Sentence of the Court, 1969, para. 99, H.M.S.O. A "respect for the law" can be regarded as an euphemistic expression of deterrence.

constructively punitive regime.[1] The Advisory Council on the Penal System recommended that "all aspects of the regime in a detention centre should be as constructive as possible".[2]

Another institutional sentence is approved school and its aim is reformative. The primary objects of approved school training are re-adjustment, social re-education in preparation for return to the community.[3] The regime was devised according to this aim. However, Cavenagh, who is also a long-standing juvenile court magistrate, reports that usually the offenders regard an approved school order as being "put away".[4] In a study made in 1957 in a remand home for boys, it was reported that a 16 year old boy said "I knew what the court says goes, and if it says approved school then my future and entire life is ruined, and did that thought make me worry".[5] Approved schools, in spite of all that is said about their re-educational function, are at times used as a method of punishment.[6] This sentence has also the aim of

[1]W. Cavenagh, "Juvenile Courts, the Child and the Law", 1967, p. 114.

[2]Report of the Advisory Council on the Penal System, "Detention Centres", 1970, para. 66, H.M.S.O.

[3]The Sentence of the Court, 1969, para. 83, H.M.S.O.

[4]W. Cavenagh, op. cit., p. 117.

[5]P.D. Scott, "Juvenile Courts : The Juvenile's Point of View", in British Journal of Delinquency, Vol. IX, No. 3, January 1959.

[6]P.D. Scott, "Residential Treatment of Juvenile Delinquents", in British Journal of Delinquency, 1951, Vol. 2.

"protection of society" in the sense that it eliminates the offender temporarily from the society.

CHAPTER 6

THE WELFARE PRINCIPLE AND THE AIM OF THE STUDY.

I - FROM RETRIBUTION TO THE PROMOTION OF THE WELFARE OF THE JUVENILE OFFENDER

Until the nineteenth century the justice and the wisdom of severe punishment of the criminal was dominant both in legal thinking and in judicial decisions. It was just because the suffering of a criminal was an expiation for his crime, and it was wise because the fear of harsh punishment deterred people from committing crimes.

However, in accordance with the rapidly changing socio-economic circumstances the fundamental and cherished beliefs were changing too. The nineteenth century was prolific in legislation. In this century the traditional retributive theories of punishment were seriously challenged and an interest in the possibility of reformative treatment was seriously indicated. This concern for reform rather than retribution and deterrence has slowly gained ground ever since, and although the principle of reform is still not universally or unambiguously accepted it is today the major concern of the penal system. The major interest of the reformers was, at first, the treatment of juvenile offenders. It has always been in the treatment of juvenile offenders that the pioneering work had been done.

The use of prisons for juvenile offenders gradually yielded to the use of reformatory and industrial schools. Probation service developed out of the experiment of placing juvenile offenders under the supervision of a responsible person who can advise and befriend them The principle of equality before the law was encroached upon in respect

of trial proceedings, and the juvenile court was established. According to the law, for example, the duty of the juvenile court when dealing with the juvenile offender is to "have regard to the welfare" of him, and "in a proper case take steps for removing him from undesirable surroundings, and for securing that proper provision is made for his education and training".[1] In short, there has been a shift in emphasis from the mere punishment of crime to a concept of treatment based mainly on the "welfare need" of the juvenile offender.[2]

II - THE WELFARE PRINCIPLE

Nineteen years after the setting up of the juvenile courts the legal principles underlying the trial of juveniles were considered by the Moloney Committee.[3] Several witnesses thought that the trial of juvenile offenders should be entirely separate from criminal jurisdiction. But the Committee's final conclusion was that the juvenile court should not cease to be a court of justice. However, the Committee recommended that the welfare of juvenile should be the primary object of every juvenile court. When this suggestion was incorporated in the Children and Young Persons Act 1933, the word primary was omitted, and that is where the matter rested until the Children and Young Persons Act 1969. Misunderstanding

[1] In cases involving the custody or guardianship of infants, the courts have always regarded the welfare of the child as "the first and paramount consideration". (Guardianship of Infants Act 1925, s. 1; Re McGrath [1893] 1 Ch. 143). Note: This Act now repealed by 1971 Guardianship of Minors Act.

[2] T.H. Marshall, "Social Policy", 1965, pp. 119 and 126.

[3] Report of the Departmental Committee on the Treatment of Young Offenders, Cmd. 2831, 1927, H.M.S.O.

on this fundamental point is widespread. For example, J.D.W. Pearce said that the Children and Young Persons Act 1933 laid down clearly that the welfare of the juvenile is the first consideration.[1] Mannheim and other authors who carried out a research on London juvenile courts wrote that ".... the primary function of the juvenile court is to consider the welfare of the child".[2] M. Callard wrote "... in juvenile courts, orders made in accordance with the directions of the 1908 Children's Act are to promote primarily the welfare of the offender. This is the policy as declared by Parliament".[3]

Although to have regard to the welfare of the juvenile offender is not the primary object of the juvenile court when dealing with him, the introduction of this principle and its adoption in legislation marked an important step forward on the road of progress in relation to the treatment of all juvenile offenders who appear before juvenile courts.[4] C.J. Collinge thinks that the importance of section 44 is that it recognizes, and gives the force of law to, a principle which was already widely accepted, and that its explicit statement of that principle is a perpetual reminder to the courts of their duty in this matter.[5]

[1] J.D.W. Pearce, "Juvenile Delinquency", 1952, p. 9.

[2] H. Mannheim, et.al., "Magisterial Policy in the London Juvenile Courts", in British Journal of Delinquency, Vol. VIII, No.1, July 1957 and No. 2, October 1957.

[3] M.P. Callard, "Dilemma for the Juvenile Court Magistrate", in New Society, 18th Feburary 1965.

[4] P. Boss, "Social Policy and the Young Delinquent", 1967, p. 41.

[5] C.J. Collinge, "Juvenile Courts and their Jurisdiction", The Proceedings of the Fifth International Congress on Social Defence, Stockholm, 1958, p. 457.

However, the welfare principle raises discussion about the sentencing function of the juvenile court. T.E. James writes that juvenile court magistrates are at present in a dilemma as to their functions. Are they merely judges or do they add to their office the understanding of a child therapist?[1] E. Younghusband holds the view that juvenile courts are placed in a highly ambiguous position because their legal structure as modified criminal courts is bound to clash with the welfare principle.[2] In Cavenagh's words, "the true character of the juvenile court is best observed when it is looked at as a slightly modified version of the adult court rather than as what it is not - an ad hoc device for furthering the child welfare provisions of the post-war welfare state". She admits that "a system of diagnosing and treating children's needs has been grafted on to one designed for protecting the public from crime by punishing the criminal," and this means, "to telescope together two procedures which may have no logical relation to each other and ought not to be so related".[3] Walker states, ".... since penal agents are human, and therefore to some degree retributive, how can one prevent retributive sentiments from

[1] T.E. James, "Child Law", 1962, p. 125.

[2] E. Younghusband, "The Juvenile Court and the Child", in British Journal of Delinquency, Vol. VII, No. 3, January 1957.

[3] W. Cavenagh, "Justice and Welfare in Juvenile Courts", British Journal of Delinquency, Vol. VII, No. 3, January 1957.

influencing decisions that are meant to be rational and utilitarian? Penal legislation sometimes attempts this (Every court ..... shall have regard to the welfare .... of the child or young person), but legislators neither know or control the heart of man, and at best they can prohibit certain types of sentence or sentences of more than a certain severity, for certain classes of offender".[1] According to Watson, a long-standing member of a juvenile court, the process of promoting child's welfare in the juvenile court is analogous to doctor's observation, diagnosis and treatment of an illness.[2]

III - THE LEGAL JUSTICE AND THE WELFARE PRINCIPLE

Traditionally legalistic justice recognizes the need to fix a sentence according to the nature and circumstances of the offence, the offender's culpability, and the previous record. To give the offender the punishment he deserved was thoughtto be the best way of deterring him and others, and of protecting society. On the other hand the requirement to consider the welfare of the juvenile clearly requires the fitting of the court's decision to the individual offender and his needs.

[1] N. Walker, "The Aims of a Penal System", in New Society, 5th January 1967.

[2] J.A.F. Watson, "Which is the Justice?", 1969, p. 133.

The practical and very important difficulty in submitting juvenile offenders to the criminal jurisdiction is that the extent of a juvenile's social needs and the nature and gravity of offence and previous record are not necessarily in proportion to each other. Widely differing views are held upon what balance should and does the juvenile court, which itself a court of justice, strike between the nature and seriousness of the offence and the previous record (legalistic concept) and the needs and personal circumstances of the offender (welfare concept). Are the decisions of juvenile court magistrates, in fact, mainly determined by what the juvenile offender has done and his previous record OR by the kind of youngster he is and his welfare needs?

Cavenagh thinks "as long as the court remains a court of law a child will not often be removed from even the most undesirable surroundings, if the charge against him is simply and solely a first offence of a minor character".[1] She writes that "in law the welfare of the offender is not the primary consideration even when dealing with a juvenile, though in practice, it may often turn out to be so".[2] In another article together with R. Sparks, she writes ".... the tariff system now generally observed by the courts ensures that the sentence imposed on a young offender is related to the gravity of his crime. Delinquents (and their parents) are well

[1] W. Cavenagh, op. cit., p. 200.

[2] W. Cavenagh, "What Kind of Court or Committee?", in British Journal of Criminology, Vol. 6, No. 2, April 1966.

aware of this system, and tend to regard a welfare measure (in particular approved school) as an undeserved and unjust punishment, whatever the court may tell them. Juvenile courts now face this problem in many criminal cases; they tend to overcome it, in practice, by refusing to send a young offender to an approved school until he has a fairly lengthy criminal record or commits a serious offence".[1] T. Morris attacks this practice and says "many juvenile courts do, as Cavenagh and Sparks pointed out, overcome the problem of apparent injustice by refusing to send a young offender to an approved school until he has a lengthy criminal record or commits a serious offence. Exactly; they wait until the horse is out of the stable!"[2] However, according to N. Walker, sentences involving removal from home are rightly regarded by most courts as a last resort, because they cause immediate distress to the offender and his parents, and there is a considerable danger that an institution of this kind will increase his chances of becoming a chronic offender.[3]

Younghusband writes "The whole idea of reform, of consciously desired

[1] W. Cavenagh and R. Sparks, "Out of Court?", in New Society, 15th July 1965.

[2] T. Morris, "Struggle for the Juvenile Court", in New Society, 10th February 1966.

[3] N. Walker, "Sentencing in a Rational Society", 1969, p. 184.

change, as a possible and desirable goal which brings its own reward in greater well-being is something which is usually alien from their thought..... What they do understand, as their fathers did, is making the punishment fit the crime, an eye for an eye and a tooth for a tooth". And she states "But by and large the law is based upon the assumption that the law-breaker could have refrained from breaking it and therefore guilty of an offence; while medical treatment, on the other hand, is based upon an attempt to understand causation and to prescribe appropriate treatment. This assumption is the new wine which is proving so heady in the juvenile courts".[1] On the other hand, K. Bilton who was secretary of the Association of Child Care Officers in 1969, states "The present position (before the Children and Young Persons Act 1969) with regard to juvenile offenders is that, although they are dealt with within a system which provides for them to get what they deserve, by and large the aim is to give them what they need, rather than what they deserve". He contimues "It has been suggested that this principle (predominance of welfare principle, author) will not be seen as fair by the children to whom it is applied. It is almost impossible to raise discussion on this matter, which concerns processes in the mind of the average child, above the level of assertion and counter-assertion, and I would merely assert that many children can and do readily accept that fairness frequently involves discriminating between the different needs

[1] E. Wounghusband, op. cit.

of different children".[1]

A research, which was carried out in Devon in 1965, revealed that the severity of sentence in the sample is graded in accordance with the seriousness of the offence.[2] Its author writes "... it may be that at present parents and the public in general are not sufficiently aware that such orders by the Court are not so much penal as more remedial and constructive. At present magistrates may fear that their policy would be challenged if they took such action after relatively minor offences had been committed. A recognition by the mind of public in general that delinquency is sometimes better interpreted as a cry for help, not for punishment, is also desirable. Then another of the barriers to constructive action might be removed".[3]

Contrary views put forward by B. Wootton and Grunhut, who carried out a research on juvenile delinquency and the treatment practice of the juvenile courts in different areas of England and Wales in 1955. B. Wootton writes "Traditionally, justice demands that similar crimes should carry similar penalties, no matter by whom they have

[1]K. Bilton, "Children and Justice", in Justice of the Peace and Local Government Review, April 19, 1969.

[2]M.P. Callard, "Distinguishing Recidivists Among First Offenders", University of Exeter, 1965. The aim of the research was to discover whether any characteristics distinguish those who come back again to court from those who do not.

[3]M.P. Callard, op. cit., Ch. XIII, pp. 137, 138.

been committed. But already in the case of young children in the juvenile courts, the practice of giving quite different treatment to each of two partmers in crime, who have apparently about equal responsibility for the offence committed, is well established; although even there it often unquestionably outrages both the children's and their parent's sense of justice."[1] Grunhut reached the conclusion that "the delinquent's personal circumstances and home background are even more significant (for the suitable form of treatment) than the gravity of the offence".[2]

Two articles relating to juvenile offender's and his parent's points of view on reform and punishment concepts in juvenile court conclude that offenders as well as their parents are heavily in favour of punishment and "strict law", not always for themselves but for everyone else[3] and parents neither understand nor are in sympathy with them.[4] Therefore if the juvenile court is to advance away from the punitive towards the clinical approach, it must carry the parent with it. If it does not, the advance will do more harm than good.[5]

[1] B. Wootton, "Crime and its Rewards", in New Society, 23rd September 1965.

[2] M. Grunhut, "Juvenile Offenders before the Courts", 1956, p. 123.

[3] P.D. Scott, "Juvenile Courts : The Juvenile's Point of View", in British Journal of Delinquency, Vol. IX, No. 3, January 1959.

[4] P.M.W. Voelcker, "Juvenile Courts : The Parents' Point of View", in British Journal of Criminology, Vol. 1, No. 2, October 1960.

[5] ibid

IV - THE AIM OF THE STUDY AND THE HYPOTHESIS

1. The Aim of the Study

The practical difficulty in submitting juvenile offenders to the criminal jurisdiction is that the extent of his welfare needs and the nature and seriousness of his offence and his previous criminal record are not necessarily in proportion to each other.

The main question at issue is that of the function of the juvenile court when dealing with the offender (sentencing stage). It is well known that the juvenile court is a court of justice. On the other hand, according to the Children and Young Persons Act 1933, section 44 (1), every court, when dealing with the juvenile offender, must have regard for the welfare of every juvenile offender before it. The aim of the research is to discover:

> Whether the nature and seriousness of the offence and the previous record OR the personal circumstances and the welfare needs of the juvenile offender is the major factor in determining the sentences. In other words, are the decisions of juvenile court magistrates mainly determined by what the juvenile offender has done and his previous record OR by the kind of youngster he is and his welfare needs. Whether the juvenile court regards its sentencing function as mainly being related to the offender's offence and previous record, or to every aspect of his welfare.

2. The Hypothesis

For the purpose of establishing a standard by which the operation of the 'welfare principle' among other factors in sentencing could be measured it was assumed that as long as the juvenile court remains a court of law, the notion of traditional justice and consequently the legal considerations such as the seriousness of the offence and the previous criminal record of the offender will limit the operation of welfare principle. For example, a juvenile offender is not removed from undesirable surroundings if the charge against him is a first offence of a minor character. In other words, the bench's interest in the juvenile defendant's welfare, in their capacity as magistrates, is related to his offence. It is only this which empowers them to interfere in his affairs at all and, if the delinquency is a first offence of a trivial kind, magistrates would not regard themselves as authorized thereby to make any very drastic sentence even if his welfare needs necessitate it. This was resolved into the following fundamental hypotheses to be tested in this study.

The severity of the sentences imposed by the juvenile courts are mainly determined by the nature of the previous criminal record and the nature of the offence rather than the welfare needs of the offender. For this reason the welfare factor in the case of first offenders who commit a trivial offence has no bearing on the severity of the sentences.

The influence of welfare factor in juvenile court sentencing could be assessed by collecting evidence about the personal and social circum-

stances of the offenders within the offence, previous criminal record and sentence groups so as to show if there are cases where the welfare needs of the offenders alone decided the seriousness of his sentences.

V - REVIEW OF RESEARCH STUDIES OF THE ENGLISH JUVENILE COURT

There have been four main studies which have investigated the various aspects of the sentencing policies of different juvenile courts in England and Wales. Two of them examined the extent to which uniformity in sentencing decisions by courts was observed. The other two studies considered the various factors in juvenile court sentencing in a limited way and treated the subject as a side-issue.

1. "Juvenile Offenders Before the Courts"

The aim of Grunhut's study was to trace diversities in the treatment of juvenile delinquents in the 134 police districts in England and Wales.[1] It is based on the experience of the three years 1948, 1949 and 1950. From a methodological point of view, this survey is primarily a statistical study. However, 700 cases studies from five districts were collected for the purpose of finding out whether there was any qualitative difference in the structure and characteristic forms of juvenile delinquency and the sentencing policy of the juvenile courts within these five areas.[2]

[1] M. Grunhut, "Juvenile Offenders before the Courts", 1956.

[2] ibid., p. 88.

Grunhut observed that the offender's personal circumstances and home background were even more significant in sentencing than the gravity of the offence. His data showed that where committals were made to approved schools, local authorities, or to detention in remand homes, magistrates were influenced by the boys' personal background rather than by the serious nature of the offence. He concludes that "a treatment which involves the separation of a boy from his home is therefore used not as a punitive measure for a particular offence, but as a necessary step towards overcoming the causes of maladjustment which have their roots in his personal background".[1] In his sample, magistrates resorted to a committal to an approved school not for the punitive effect of an enforced separation from the family, but in order to prevent further deterioration caused by the influence of a bad home.

Two major criticisms can be levelled at the way in which Grunhut reached such a conclusion. The first criticism is that he considered only those sentences which involve removal from home. However, it may be the case that such sentences were applied as a last resort by the magistrates; because in the majority of these cases the personal circumstances and the home backgrounds of the offenders were "bad". What he omitted was to investigate the sentences as a whole. Such an analysis is of vital importance since it would have shown

[1] ibid., p. 111.

whether all the "bad" cases had been dealt with by removal from home or otherwise. If they were, in fact, disposed otherwise; it would have been interesting to have learned what kind of sentences were imposed in such cases.

Secondly, Grunhut did not investigate the influence of the "previous criminal record" and other possible factors on the sentencing policies of the courts under study. He did not mention, for example, whether the magistrates considered making an approved school order in the case of a first offender whose personal circumstances and background necessitated such a sentence. If there were such cases - what were their proportion in all cases? It might have been the case that the majority of offenders in his sample were offenders with long previous criminal records, and this factor coincided with the bad personal circumstances and background of the offenders who were sent to approved schools in his sample. As will be shown later in the present study, the "previous criminal record" is an important factor in sentencing.

2. "Magisterial Policy in the London Juvenile Courts"

In the second study magisterial policy in the London juvenile courts was analysed.[1] The aim of this survey is to examine the extent to which uniformity in sentencing decisions by courts may be observed in a random sample of cases in one particular area, namely in London. In

[1] H. Mannheim, J. Spencer and G. Lynch, "Magisterial Policy in the London Juvenile Courts", in British Journal of Delinquency, Vol. VIII No. 2, October 1957.

spite of the fact that the purpose of the London juvenile courts survey is different from the present study, it seemed necessary to describe very briefly the major finding of this important piece of work.

The sample consisted of 400 boys, selected from the boys aged 14, 15 or 16 who were found guilty of larceny by eight London juvenile courts in the year ending on 31st March, 1952. Analysis of factors such as, family structure, criminal records in the family, conditions in the home, boys' leisure pursuits, socio-economic status of households, did not show any relation with the sentencing policy of the courts. Apart from the tendency to apply conditional discharges to those coming from better families without criminal records, there was no relationship to be observed between the policies of all the courts.[1]

4. "Distinguishing Recidivists Among First Offenders"

The ultimate purpose of the third study is to discover whether any characteristics distinguish those who come back again to court from those who do not.[2] But an initial analysis suggests some relationships between the sentence, the offence, and the circumstances and personal attributes of the offender. One of the findings is that magistrates prefer to make mistakes through giving too mild orders

[1] ibid., October 1957, p. 138.

[2] M.P. Callard, "Distinguishing Recidivists Among First Offenders", Chapter III, 1965.

than to inflict unduly heavy penalties. This implies that the sentencing task of the juvenile court is seen more as a punishment rather than the welfare of the offender.

However, as the author states, it was a small sample, and sub-dividing it into groups according to the sentence makes the conclusions only tentative.[1] In this study too, the "previous criminal record" and other factors in sentencing were not investigated. Therefore the findings do not adequately reveal the factors which underlie the sentencing policy of the juvenile courts in the study.

4. "Decision-Making in Juvenile Cases"

The fourth study examined the sentencing practice of the juvenile courts in Sheffield, Derbyshire, Derby Borough, Nottinghamshire, West Riding of Yorkshire, Barnsley, Doncaster and Rotherham.[2] The study used judicial criminal statistics exclusively, and covers indictable offences only. The Tables, which cover a period of two years, are concerned with the treatment of boys only.

The results show that there are widely differing approaches in the

[1] M.P. Callard, "Dilemma for the juvenile magistrate", in New Society, 18th February 1965. The sample consisted of 200 boys between 10 and 15 years of age who had committed property offences and had been brought to the courts for the first time between September 1960 and 1961.

[2] K.W. Patchett and J.D. McClean, "Decision-Making in Juvenile Cases", in Criminal Law Review, 1965, pp. 699-710.

use of particular sentences from one court area to the next. In Barnsley "73 per cent of boys under fourteen and 65 per cent of those between fourteen and seventeen are fined. The corresponding national figures are 17 per cent and 23 per cent".[1] So far as the use of discharges, both absolute and conditional, are concerned, Derby (Borough), Doncaster and West Riding magistrates use discharges in a large number of cases; Barnsley, Rotherham and Sheffield in fewer cases. Patchett and McClean's conclusion: "Wide variations in the use of particular orders suggest basic differences in the approach to the selection of sentences, underlying which may be found major differences of outlook concerning the policy to be implemented".[2]

However, this work did not analyse the various characteristics of the offenders and the other factors in sentencing such as the type and nature of offences, and the previous criminal records of the offenders. Such factors which influence sentencers may be differently distributed in different court areas. As it is confirmed in Grunhut's study there are several local pecularities in the distribution of characteristics among offenders before the courts in individual districts.

[1] ibid., p. 703.

[2] ibid., p. 710.

CHAPTER 7

RESEARCH METHOD

I - THE STATISTICS

The ever growing use of statistics in numerous fields of science as well as in the study of human behaviour has been taking place since the time when Quetelet and Guerry laid the foundations of modern criminal statistics. However, our knowledge of human behaviour still applies within certain specified limits only, and objectively in the social sciences consists in the frank admission of those limits. With these qualifications, the present study relies on the data of the official and privately collected criminal judicial statistics as its starting point.

All data relating to the amount and the nature of delinquency and the sentencing policy of the courts were collected from the Criminal Statistics, England and Wales, 1968, Supplementary Criminal Statistics Relating to Crime and Criminal Proceedings, 1968, and personally collected statistics from the 1968 Juvenile Court Registers of Stoke-on-Trent and Leek.

Rates computed from figures in the official statistics which apply to the country as a whole are referred to as national rates. In fact national data consists of small numbers of juvenile offenders who were dealt with in magistrates' courts which were not juvenile courts, because the juvenile offenders had been charged jointly with adult offenders. The small number of juvenile offenders dealt with by Quarter Sessions and Assizes is not included in the national rates in the present study. In 1968, their number was 951.[1] Further

[1] Criminal Statistics, England and Wales, 1968, Annual Tables, II(d) and II(e), H.M.S.O.

information and discussion on judicial criminal statistics will be presented on "juvenile delinquency in both areas", and "the sentencing policy of the courts".

II - THE SAMPLE

The data of this study is derived from the following sources: juvenile court registers, police reports on criminal antecedents of the juvenile offender and his parents, brothers and sisters, social enquiry reports, remand home reports, psychiatric and psychological reports and school reports. The Stoke-on-Trent sample consists of 346 case histories, whereas the Leek sample consists of only 24 case histories.

In 1968, there were three, at times, four juvenile courts sitting on the same day, once a week, on a rota basis, in Stoke-on-Trent. The Leek juvenile court, on the other hand, used to sit once a month. It was decided to include all "breaking and entering" and "stealing" offences that were dealt with by the Stoke-on-Trent and Leek juvenile courts in 1968 into the sample. (The reason for selecting those two types of offences will be explained later in this chapter under the heading "ranking the offences"). For this purpose the juvenile court registers were a valuable source of information.

However, when we look at the total number of "breaking and entering" and "stealing" offences that were dealt with by the juvenile courts in both areas, we see that the number of offenders are less in the sample. There were 262 stealing and 155 breaking and entering offences that were disposed by the Stoke-on-Trent juvenile courts, whereas, the corresponding figure in the sample is: 243 and 103 respectively. There were 16 stealing and 7 breaking and entering offences that were dealt with by the Leek juvenile court, whereas, the corresponding figure in the Leek sample is: 18 and 6 respectively. Such a difference may evoke some suspicions on the reliability of the random sample. However, such a difference arose from the following reasons:

1. Some offenders were charged with, and accordingly, were dealt with for more than one offence on the same occasion (this should not be confused with offences taken into consideration). Thus separate sentences for each offence were imposed. If similar sentences were imposed on a particular offender who was charged with the same type of offence, say stealing, then only one of the offences was included into the sample. If different sentences were imposed on the same type of offences, for example, conditional discharge for the first stealing offence and fine for the second stealing offence, then the offence disposed of with the most severe sentence (ranking sentences will be considered later in this chapter) was included into the

sample.

On the other hand if an offender is found guilty of two different indictable offences only one offence is taken into account for the purpose of calculating the criminal statistics.[1] However, this technique is not complied with as far as the selection of cases for the sample is concerned. If an offender was dealt with for breaking and entering and stealing offences on the same occasion, then both cases were included in the sample.

2. Some social enquiry and other reports were transferred to other probation offices at different parts of the country because the offender left the areas under review for other parts of Britain during 1968.[2] It would be beyond the limits of the research worker to trace them, therefore these cases were to be excluded from the sample.

3. Two breaking and entering cases were sent by the Stoke-on-Trent juvenile courts to quarter sessions with a view to a borstal sentence and so they were dealt with in the Quarter Sessions. They, too, were excluded from the sample.

4. Attempts at breaking and entering and stealing were also excluded.

[1]For further information see Chapter 8, II - Juvenile Delinquency, 1. General Considerations.

[2]Field-work was carried out in the first part of 1969.

5. One burglary case was excluded too.

As it was pointed out previously the data which will be analysed in the following chapters were extracted from the various social enquiry reports and court registers. However, these sources do not adequately illustrate the whole situation with which the magistrates based their sentencing decisions. A study of reports and records can give only an incomplete account of the facts leading to a court's sentencing decisions, since an essential piece of information may be known only to the magistrates and remains concealed from the research worker. This and other disadvantages of employing such a technique for investigation will be considered at the end of this chapter under the heading "limitations of the present study".

III - CONFIGURATION OF "GOOD" AND "WELFARE" CASES

Criminological research has shown that an analysis of single characteristics of offenders alone does not lead to a satisfactory explanation of crime and its causes. Likewise the selection of the appropriate treatment by magistrates is very rarely determined by the prevalence of one or the other personal or social factor. The decision of the court requires a comprehensive view.[1] Offenders' lives are characterized by a composite pattern of personal circumstances and social conditions. Therefore, in the sample, rates of

[1] M. Grunhut, "Juvenile Offenders before the Courts", 1956, p. 97.

single factors was supplemented by rates for configurations of several factors.

For a comprehensive view, personality and social background are composite concepts which allow a certain variation in the individual criteria which in their sum total characterize an offender and his environment. Whether an offender's home conditions and personal factor is "good" or "bad" depends on whether he lives in a complete natural family or comes from a broken home, whether there are, or are not, satisfactory personal relationships in the family, whether there is, or is not, proper discipline, whether any other member of the family has been concerned in criminal activities, whether there is, or is not, a history of maladjustment or some other kind of mental or emotional disorder which the offender suffered or was suffering at the time of the offence, and finally whether the offender has high or low intelligence.

It was assumed that cases with at least four positive scores in respect of the six criteria were "good" cases, and cases with at least four negative scores were "bad" cases, while those which scored three on either side would be classified as "average" cases. In the two chapters of the present study "bad" and "average" cases are combined and classified as being "welfare" cases. It should, therefore, be realized that "welfare" cases are those where, according to the configuration, the offenders' personal circumstances and home conditions scored three or less. In other words in such

cases the offenders have some sort of "welfare" problems which the juvenile courts must take into account in making a sentence.

IV - RANKING OF OFFENCES

1. General Considerations

The comparison of the distribution of types of sentences according to the nature and seriousness of the offence is a very important part of the present study. Therefore, it was considered essential to arrange the offences in increasing order of seriousness for analytical purposes.

The difficulty in ranking offences is to some extent reduced by distinguishing between indictable and non-indictable offences, motoring and non-motoring offences, and further sub-dividing them into larceny, breaking and entering, sexual offences, violence against the person and so on. The more of these sub-divisions there are, the more homogeneous the offences which they comprise.

However, even this is not satisfactory in ranking the offences according to increasing ~~severity~~ seriousness.[1] At this stage another approach has been suggested: this is the weighted index. This system assumes that it is reasonable to add up even quite dissimilar offences pro-

[1]Since in the non-indictable group there may well be some more serious offences than in the indictable group.

vided that a system of weighting is used. Weighting means assigning different scores to different offences: for example, counting 10 for each murder, 9 for each serious assault, 5 for a robbery, 1 for a theft, and so on.

One solution which was put forward was to base the weighting on the sentences for different types of offence - either on the maximum permissible sentences or on the actual sentences. For mainly three reasons this would be unsatisfactory. First it is difficult to defend the rationality of the maxima for offences in statutes. Secondly, as far as actual sentences are concerned, the judges and the magistrates are also influenced by information about the offender and the previous criminal record, as proved in the present study,[1] and this may be irrelevant to the seriousness of the offence. Finally, the juvenile court magistrates can impose any sentence within their powers on an offence punishable in the case of an adult by imprisonment. In other words there are no maxima or limitation of sentences in such cases.

Another solution adopted by Sellin and Wolfgang was to devise a system of weighting by describing 141 carefully prepared accounts of different crimes to policement, university students and juvenile

[1] See also N. Walker, "Crimes, Courts and Figures", 1971, Ch. 6, Table 6. Shopbreakers appeared to be sentenced more heavily than men of violence but probably because they had longer records.

court judges.[1] The different crimes include elements such as the death or hospitalization of the victim, the use of a weapon, the forcible entry of premises, the value of property stolen, and so on. Respondents were asked to rate each of these on a scale, and their ratings were used to construct the weighting system.

The Perks Committee rejected the idea of an overall index of the Sellin-Wolfgang type, however it did not oppose the idea of weighting, which it thought might be suitable for property offences for which the value of goods stolen, or damaged, could be used.[2]

2. Ranking of Offences in the Present Study

The Sellin-Wolfgang method of ranking offences first and foremost necessitates obtaining the details of each offence in the sample. Such information is found in the records kept by the police. However, it was not possible to obtain access to such reports. Consequently it was decided to select, as far as possible, homogeneous offences as defined in statutes. For this purpose the relevant data were extracted from the juvenile court registers. At the first stage the most common offences committed by juveniles, breaking and entering and stealing were included into the sample.[3] For the purpose of

[1] T. Sellin and M.E. Wolfgang, "The Measurement of Delinquency", 1964.

[2] Report of the Departmental Committee on Criminal Statistics, December 1967, Cmnd., 3448, para. 129, H.M.S.O.

[3] Another most common offence group, motoring offences, was regarded as trivial, so no social enquiry reports were submitted to the juvenile courts. Therefore they were not included in the sample.

establishing relative uniformity in the seriousness of these offences; a) attempts to both types of offence were excluded, b) one burglary case, which is essentially a nocturnal version of breaking and entering,[1] and various other forms of offences against property without violence such as, receiving, fraud, embezzlement, false pretences and taking and driving were also not included into the sample. Then, according to the amount of goods or money stolen, stealing offences were divided into two groups: where the amount stolen was between £1 (inc) and £20, the offence classified as serious stealing, if the amount stolen was up to £1 it is classified as minor stealing. As a result of the inadequacy of information on various other criteria such as, whether the money or goods had been stolen, whether the stealing had taken place in a dwelling house or in a shop, or from a friend, or whether the place broken into was a dwelling-house, derelict house or a warehouse, further ranking of offences could not be made.

Then breaking and entering group was ranked as being the most serious offence in the sample, followed by serious stealing; minor stealing being the trivial offence. Some arbitrary judgement was inevitably involved in such a relatively ambiguous ranking. In point of fact, sentences imposed in the case of each group (for

[1]The information relating to the amount stolen in breaking and entering was not uniform, therefore similar classification on the lines of stealing could not be made.

actual cases) confirmed such a scaling of offences.[1]

In summary the type of offences will be analysed in the sample (sample offences) according to increasing degree of seriousness are: a) minor stealing where the amount stolen is up to £1, b) serious stealing where the amount stolen is between £1 (inc) and £20 (inc), and c) breaking and entering.[2] Their common characteristic is that they are offences for which the other courts could sentence an adult to imprisonment. Accordingly, the juvenile courts can impose all types of sentences within their power in the case of these three sample offences. This rank order of offences will constitute one important basis in chapters 12 and 13 which analyses the various factors in sentencing.

V - RANKING SENTENCES

It was also essential to rank the sentences according to the degree of severity in order to compare the distribution of types of sentences according to the nature and seriousness of the offence.

Removal from home is undoubtedly the most drastic measure at

[1] See Ch. 11, "Summary and Conclusions".

[2] A pilot study in the Borough of Newcastle-under-Lyme corroborated these accounts as defining "minor" and "serious".

the disposal of a juvenile court. On the other end of the scale, absolute discharge and conditional discharge are the two measures which are used when the courts think that no further action, corrective or punishment, is necessary. From the viewpoint of ranking sentences fines, in juvenile court law, do not pose a great problem, since a young person cannot be fined more than £50 and a child cannot be fined more than £10 for any offence, whatever the maximum fine that can be imposed on an adult.[1] However, it is difficult to rank the probation and the attendance centre, even if the first is reformative, as is generally accepted, and the latter is regarded as punishment.

In the present study sentences were ranked by the juvenile courts magistrates who agreed to be interviewed. During the interviews 24 Stoke-on-Trent and 6 Leek juvenile court magistrates were asked to rank the sentences according to increasing severity. Stoke-on-Trent magistrates were unanimous in ranking the absolute discharge as being the least severe sentence followed by conditional discharge and fine. However, there was disagreement in ranking attendance centres and probation. 13 out of 24 magistrates regarded the attendance centre as being less severe than probation, the rest, 11, considered probation as more severe than attendance centre. The sentences involving removal from home were again ranked unanimously

[1] Magistrates' Courts Act, 1952, sections 20 and 32, as amended by section 8 of Criminal Justice Act, 1961.

according to increasing severity as follows: fit person, detention centre and approved school.[1] The pattern of ranking sentences was similar in the case of Leek magistrates too. Only one out of six magistrates ranked probation as being less severe than attendance centres. However, unlike Stoke-on-Trent magistrates, they were not unanimous in ranking detention centre and approved school since two of them said that detention centre was more severe than approved school.[2]

In summary, the ranking of sentences which was carried out by the magistrates themselves according to the increasing severity is as follows: absolute discharge, conditional discharge, fine, attendance centre, probation order, fit person, detention centre and finally approved school. This rank order of sentences will constitute an important basis in analysing the various factors in sentencing.

One important point is that all magistrates ranked probation as being more severe sentence than fine. Also in another survey[3] fines were regarded as a less formidable deterrent than probation

[1] Table 1

[2] Table 2

[3] H.D. Willcock and J. Stokes, "Deterrents and Incentives to Crime among Youths aged 15-21 years", Part II, 1963, Government Social Survey.

by young males aged between 15 and 21 years , in spite of the fact that in adult courts maxima for fines are much higher than they are in juvenile courts.

RANKING OF SENTENCES BY 24 STOKE-ON-TRENT MAGISTRATES

TABLE 1

Ranking 1 most lenient	24 Stoke-on-Trent Magistrates							
	Sentences							
8 most severe	Absolute Discharge	Conditional Discharge	Fine	Attendance Centre	Probation Order	Fit Person	Detention Centre	Approved School
1	24							
2		24						
3			24					
4				13	11			
5				11	13			
6						24		
7							24	
8								24
Total	24	24	24	24	24	24	24	24

RANKING OF SENTENCES BY 6 LEEK MAGISTRATES

TABLE 2

Ranking 1 most lenient	6 Leek Magistrates							
	Sentences							
8 most severe	Absolute Discharge	Conditional Discharge	Fine	Attendance Centre	Probation Order	Fit Person	Detention Centre	Approved School
1	6							
2		6						
3			6					
4				5	1			
5				1	5			
6						6		
7							4	2
8							2	4
Total	6	6	6	6	6	6	6	6

VI - SOME REMARKS ON THE PREVIOUS CRIMINAL RECORD

The previous criminal record is one of the more salient factors in sentencing which are analysed in the present study. However, it posed a problem as to which of its two variables, namely the nature of the previous criminal record or the size of the previous criminal record, is more influential on the sentencing decisions of the magistrates. During the pilot study, in which some Newcastle-under-Lyme juvenile court magistrates were interviewed, it was found that the magistrates were interested more in the nature of the previous criminal record rather than the size of it. This was confirmed later during the interviews with the Stoke-on-Trent and Leek juvenile court magistrates. Although the magistrates did not consider the number of previous convictions altogether unimportant, they said that they were interested more in the nature of the previous criminal record. For example, offender A has five previous convictions, all of them conditional discharges imposed on the same occasion. Offender B, on the other hand, has two previous convictions; both of them are probation orders made on two different occasions. All the magistrates agreed upon the serious nature of the latter type of previous criminal record.

While investigating the various factors in sentencing, the nature of the previous criminal record was again taken as a reliable basis, however, breaches of conditional discharge or probation, were omitted from the analysis since this would have reduced the numbers in each group to the extent that would make the statistical analyses and inferences almost impossible. The rank order of the nature of previous criminal records according to increasing seriousness is as follows:

a) None.

b) Previously discharged absolutely and/or conditionally and/or fined and/or sent to an attendance centre. In such cases an offender might have had imposed on him at least one of the four above mentioned sentences or he might have received more than one of these four sentences previously.

c) Probation once only. That is put on probation once before with or without discharges, attendance centre and fine.

d) Probation on two different occasions; with or without discharges, fine and attendance centre.

e) The offender had been committed to the care of a fit person once before.

f) The offender had been put on probation and also had undergone an institutional treatment (either detention centre or approved school).

g) The offender had been put on probation on two different occasions and had also been committed to the care of a fit person.

h) The offender had been put on probation on two different occasions and also undergone an institutional treatment previously.

This rank order of the nature of the previous criminal record is an important issue in the analysis of the previous criminal record factor in sentencing.

During the interviews magistrates also made clear that the type of offence(s) committed previously is also quite important. However, this variable could not be analysed in the present study. The reason is that the criminal antecedents reports were missing from the files, and the index cards kept in the probation offices would not uniformly include the type of offence the offenders committed previously, though they include uniformly the type of sentence(s) imposed previously.

VII - "SIGNIFICANCE" AND THE STATISTICAL TESTS EMPLOYED IN THE PRESENT STUDY

A problem which arises in the analysis of the relation between sentences and the various criteria in sentencing is the "significance" to be attached to differences. Are they differences which could have arisen by chance, or can they safely be regarded as indicating that there is a real difference of some sort between two variables?

Careful selection of a sample will eliminate obvious kinds of bias.

Naturally the larger the sample fraction the more representative it is likely to be of its population. However, no amount of care in sampling can eliminate the possibility that two or more samples taken from the sample population will differ slightly in regard to the variables in which one is interested. The important thing is to determine whether the observed sample differences signify differences among populations or whether they are merely the chance variations that are to be expected among random samples from the same population. Therefore a difference between samples is said to be significant if the probability that it has occurred solely through the chance operation of sampling is low. Then and only then can one proceed to inferences. The probability is calculated by one of a number of "significance tests" according to the nature of the data and the result is expressed as a value of p (probability).

The objective of the statistical analysis in the present study is to determine the degree to which the sentences differ according to variations in the criteria for sentencing. Throughout the analysis of the Stoke-on-Trent sample the chi-square (χ^2) test[1] is used to test the hypothesis that two or more groups differ significantly with respect to the distribution of the sentences

[1] S. Siegel, "Nonparametric Statistics for the Behavioral Sciences", 1956, pp. 175-179.

imposed. The same test could not be used in the case of the Leek sample (only 24 cases) since the chi-square test is sensitive to sample size. It is important to realize, therefore, that the conclusions drawn from the Leek sample are always - indicates - a particular tendency; it cannot be said that the conclusion is statistically significant or non-significant.

As it has been just stated, chi-square is sensitive to sample size therefore, in analysing the Stoke-on-Trent sample a high level of probability has been chosen in the making of inferences. Accordingly the $p = 0.001$ level has been adhered to throughout. In terms of the study's objective, this signifies that if the differences in sentences between two or more categories of cases could have occurred by chance in no more than one out of a thousand, it will be inferred that the differences in sentences are statistically related to the particular variable. 0.01 ~~0.001~~ level has been adopted as the point at which one is allowed to talk as if one's results could not be due to mere sampling error.[1]

The numbers in the sample in regard to the relation between social attitudes and the various personal and social characteristics of magistrates, for example social class, is too small (24 magistrates), and is less than 5 in some columns. In such cases the Fisher Exact

[1] N. Walker, "Crimes, Courts and Figures", 1971, p. 89.

Probability Test is used to calculate the significance since it would be meaningless to use the chi-square test. This test is useful in analysing discrete data when the two independent samples are small in size.[1]

VIII - THE LIMITATIONS OF THE PRESENT STUDY

The present study is similar to previous research into sentencing in that it is restricted to the consideration of reports made available to the court at the time of sentencing. The limitation of this type of approach lies first in the fact that it is quite possible that information other than found in the reports affected the sentencing decisions of the magistrates. Therefore from this type of study it is not possible to determine the impact of information actually considered by the magistrates on the sentencing decisions made.

First, there are the facts, often of quite decisive importance, which remain unreported in the reports such as the opinion of a parent which remains concealed from the researcher. Closely connected with this, there is the general demeanour and manner of the offender and his parents in the court during the hearing of the case.

Secondly, sentences pronounced in court are the end results of a

[1]S. Siegel, op. cit., p. 96.

complex process. The magistrates can be expected to respond to the total universe of information placed before them in a variety of ways.[1] The individual responses will be determined not only by the raw information presented to them but by the specific perceptual mechanisms, attitudes and personality of each magistrate. The social setting in which sentencing takes place is also important. The mental activity of the magistrates and the social processes in which that activity takes place are indivisible. It is past experience, opinions, attitudes and feelings that permit a person to interpret information and attach meaning to it. An elementary analytic step has been taken in the present study, and the social attitudes of the magistrates toward long-run social change have been discovered, and then have been related to the actual sentences they made. Nevertheless in all studies of sentencing it is necessary to draw a line at some point since it is impossible to carry out an all-round study of sentencing process and the persons involved in it.

[1] J. Hogarth, "Sentencing Research - Some Problems of Design", in British Journal of Criminology, Vol. 7, No.1, January 1967.

CHAPTER 8

STOKE-ON-TRENT AND LEEK :

THE SOCIO-ECONOMIC BACKGROUND AND JUVENILE DELINQUENCY

I - THE SOCIO-ECONOMIC BACKGROUND

1. General Considerations

Stoke-on-Trent had a population of 273,040 in 1968 and covered 22,927 acres.[1] It is the thirteenth largest city in England and Wales. This conurbation was brought under one civic rule in 1910 when the country borough of Stoke-on-Trent was formed. In 1925 Stoke-on-Trent became a city. It consists of six small towns, not five as Arnold Bennett would have had us believe. The relative individuality of six towns still persists.

It is an heavily industrialized area. The pattern of industry is:

1. clay (pottery, bricks, tiles and insulators)
2. coal
3. various types of engineering (iron and steel, blast furnaces and foundries, chemical works)
4. rubber products (Michelin tyre factory).

However, what contributes most to the fame of the area is that it is the centre of the great clayware industries. Therefore it is known as the "Potteries".

[1] Statistical Review of England and Wales, 1968, Part II, Tables, Population, Table E, H.M.S.O. It is estimated population at 30th June 1968.

Leek had a population of 19,210 in 1968 and covered 4,315 acres.[1] Leek Urban District Council was constituted under the provisions of the Local Government Act, in 1894.[2] It is essentially a market town which serves the needs of the rural and moorland country which surrounds it. However, it has some light industries too, and is regarded as one of the country's important centres of textile manufacture. Butter blending is the other important light industry in the area. Among such small towns with a working population equally split between those engaged locally and those who commute, Leek is fairly typical and unexceptional.

2. Socio-economic Considerations

The density of population in Stoke-on-Trent is: 11.8 per acre,[3] whereas the corresponding value in some other county boroughs in Staffordshire are as follows: West Bromwich 14.6 per acre,

Wolverhampton 15.4 per acre.

Leek's density is 4.5 per acre, whereas the corresponding figures in neighbouring areas are as follows:

Cheadle 0.6 per acre

Biddulph 2.4 per acre

Kidsgrove 5.2 per acre.

[1] ibid

[2] Official Guide of Leek, issued by the authority of the Leek Urban District Council.

[3] Sample Census 1966, County Report, Staffordshire, Table 1, H.M.S.O.

Stoke-on-Trent's population decreased by 4,211 since 1961, Leek's population remained the same.

Turning to the density of household occupation (i.e. persons per room) in both areas. It seems that Stoke-on-Trent has an overcrowding problem in comparison with Leek. In Stoke-on-Trent the percentage of the persons living more than one in a room is 12.6, whereas in Leek it is only 8.6 per cent.[1] The corresponding percentages for Leeds 11.9, Sheffield 11.8, Coventry 11, Greater London 13, Wolverhampton 13.6, West Bromwich 17.4, Birmingham 17.8, Manchester 16.2, Liverpool 19.3.[2] Figures demonstrate that Stoke-on-Trent is in an intermediate position among the heavily industrialized cities. It will be observed that the boroughs with the more dense occupancy are those which have acted as reception areas for immigrant populations. Stoke has significantly few of such recent immigrants. At the same time its housing stock and level of amenity is undeniably low.

So far as the birth rate is concerned Stoke-on-Trent is slightly below the national average, whereas Leek is slightly above the national average.

[1] ibid

[2] ibid, relevant Counties.

Ratio of local adjusted birth rate to national rate[1]

England and Wales	1.00
Stoke-on-Trent	0.96
Leek U.D.	1.03

In both areas death rate is above the national average.

Ratio of local adjusted death rate to national rate[2]

England and Wales	1.00
Stoke-on-Trent	1.23
Leek U.D.	1.05

Both areas have another problem too. The rate of deaths under the age of one year is higher in both areas in comparison with the country's average.

Deaths under one year : Rate per 1,000 live births[3]

England and Wales	18
Stoke-on-Trent	19
Leek U.D.	20

[1]Statistical Review, 1968, Part II, Tables, Population, Table E, H.M.S.O.

[2]ibid

[3]ibid

The above data reflect the problems of both areas which are the subjects of the present study. In addition to the aforementioned figures there are 5,000 dwellings in Stoke-on-Trent officially classed as slums by the Medical Officer of Health.[1] Unofficial view puts the figure, for both slums and slum-like dwellings, as much as 30,000.[2]

So far as the social class composition of both areas is concerned; both show a preponderance of manual workers, particularly in the case of Stoke-on-Trent.

TABLE 3

	England and Wales[3] %	Stoke-on-Trent[4] %	Leek %
Employers, Proprietors and Managers	10.1	6.1	13.1
White-Collar Workers	30.5	12.9	21.1
Manual Workers	59.3	80.9	65.8

[1] Cited by J. Nicholson, "On Development", The Guardian, Special Report on Stoke-on-Trent, June 21, 1971.

[2] ibid.

[3] Figures extracted from Research Papers (No.6), Donovan Report (1967). For the purpose of comparison "managers and administrators" in the national figures combined with "employers and proprietors".

[4] Figures calculated from the Sample Census, 1966, England and Wales, Economic Activity County Leaflet, Staffordshire, Table 4, H.M.S.O. Groups "members of armed forces" and "indefinite" were excluded.

The rate of unemployment in Stoke-on-Trent (2.0 per cent)[1] was just below the national average (2.2 per cent)[2] on 8th July 1968. Similar percentages on the same date were 1.4% in Greater London, 2.3% in Birmingham, 2.7% in Coventry, 2.3% in Wolverhampton, 6.3% in Durham, 3.4% in Liverpool and 2.1% in Manchester. However the secretary of the North Staffordshire Chamber of Commerce and Industry complained that in the field of regional and national economic planning North Staffordshire was being neglected by the Whitehall.[3] The value for Leek was 0.9%.

Social Class and the Earnings of the Families of Offenders

Analysis of the class structure and earnings of the families[4] of offenders was made in the case of a sample offenders only (346 in Stoke-on-Trent and 24 in Leek). Data relating to the occupational classification of the heads of families of the offenders reveal that in Stoke-on-Trent[5] only 5.1 per cent belong to the intermediate group, whereas in Leek[6] there are none in this group. If skilled,

[1]Employment and Productivity Gazette, Volume 76, August 1968, p. 660.

[2]Abstract of Regional Statistics, 1969, Table 13.

[3]T. Glover, "Neglect in High Places", Supplement to the Evening Sentinel, 31st January 1968.

[4]Head of the families' occupations and weekly earnings are the basis of the analysis.

[5]Table 4.

[6]Table 5.

OCCUPATIONAL CLASSIFICATION OF THE HEADS OF FAMILIES

OF THE OFFENDERS - STOKE-ON-TRENT

TABLE 4

Classification of Occupations	No.	%	TOTAL OF SAMPLE CASES (346)
Professional Occupations	1	n	
Intermediate Occupations	13	5.1	
Skilled Occupations	112	44	
Partly skilled and unskilled Occupations	63	24.8	
Home duties	28	11	
Unemployed	37	14.5	
Total	254	100	

Note: 1. "Home duties" group consists those women whose husbands are dead or are divorced and if she is not working, and receiving e.g. social security benefits etc.

2. Information could not be found in 92 cases.

3. n = less than 0.5 per cent.

OCCUPATIONAL CLASSIFICATION OF THE HEADS OF FAMILIES OF THE

OFFENDERS - LEEK

TABLE 5

Classification of Occupations	No.	%	TOTAL OF SAMPLE CASES (24)
Professional Occupations			
Intermediate Occupations			
Skilled Occupations	2	11.7	
Partly skilled and unskilled Occupations	10	58.8	
Home duties	5	29.4	
Unemployed			
Total	17	100	

Note: Information could not be found in 7 cases.

partly skilled and unskilled occupations are combined they amount to 68.8 per cent in Stoke-on-Trent (excluding a further 25.5 per cent home duties and unemployed) categories. Thus the manual worker families, together with home duties and unemployed groups are over represented, among the offenders' families (80.9 per cent of the total working population are manual workers in Stoke-on-Trent). In Leek 70.5 per cent of offenders' families are manual workers. Those who are classified as "home duties" pose a problem since they mean that the mother is living alone, either as a result of death of the husband or divorce, and receiving some kind of help from the State. The percentage is 11 per cent in Stoke-on-Trent and 29.4 per cent in Leek. Unemployment is relatively higher among offenders' families in Stoke-on-Trent (14.5% as compared with 2%).

So far as average weekly earnings are concerned, 86.3 per cent of the Stoke-on-Trent and all the Leek families of offenders were earning £20 or less weekly at the time of study.[1] Among those 18.1 per cent in Stoke-on-Trent and 37.5 per cent in Leek were earning weekly, £10 and less. Another 33.4 per cent in Stoke-on-Trent and 37.5 per cent in Leek were earning weekly between more than £10 and £15 inclusive. Only 13.4 per cent of families in Stoke-on-Trent and none in Leek were earning about or more than the national weekly average earnings which was £22.5s (25p) in

[1]Tables 6 and 7.

BASIC WEEKLY EARNINGS OF THE HEADS OF FAMILIES OF THE OFFENDERS - STOKE-ON-TRENT

TABLE 6

Weekly Earnings	No.	%	TOTAL OF SAMPLE CASES (346)
Up to £10 inclusive	51	18.1	
£11 - £15	94	33.4	
£16 - £20	98	34.8	
£21 - £30	34	12	
£31 and over	4	1.4	
Total	281	100	

Note: Information could not be found in 65 cases.

BASIC WEEKLY EARNINGS OF THE HEADS OF FAMILIES OF THE OFFENDERS - LEEK

TABLE 7

Weekly Earnings	No.	%	TOTAL OF SAMPLE CASES (24)
Up to £10 inclusive	3	37.5	
£11 - £15	3	37.5	
£16 - £20	2	25	
£21 - £30			
£31 and over			
Total	8	100	

Note: Information could not be found in 16 cases.

April 1968.[1] Figures show that offenders in both areas are from poor families. Nevertheless, one should regard these data as somewhat unrealistic since the wages quoted are flat wages.

In general, these findings do at least go some way to confirm the well-known connexion between the socio-economically deprived and the high crime rate.[2] (The crime rate in both areas will be investigated in the following part of this Chapter).

II - THE JUVENILE DELINQUENCY

1. General Considerations

Investigation of the sentencing policy of juvenile courts must take into account both the volume and the nature of juvenile delinquency in the particular areas studied since magistrates are likely to be influenced by the actual conditions as they prevail in their areas. Thus, an offender who has committed a crime which falls into a category which constitutes a problem in a particular area, may find himself dealt with more severely than in an area where such a crime is less commonplace.

[1]Employment and Productivity Gazette, Vol. 76, December 1968, p. 1051.

[2]See also F.H. McClintock and N.H. Avison, "Crime in England and Wales", 1968, p. 83.

In this analysis we are concerned with criminal (as distinct from civil) judicial statistics. Being concerned with formal transactions in courts, these statistics are not subject to many of the sorts of inaccuracy which afflict the counting operations of, for example recorded crimes. However the judicial statistics do not count individual offenders; they count appearances by offenders in court. The same offender may appear more than once within the same year, on the same or on a different sort of charge, and with different results. These statistics do not count charges. A single appearance may involve more than one charge, but what is counted for the purpose of tabulation is the principal offence.[1] If more than one charge led to conviction, the principal offence is the one for which the heaviest sentence[2] was imposed; and if the actual sentences were the same, it is the offence carrying the highest permissible sentence. There is one exception to this; if a person is convicted on the same appearance for both indictable and non-indictable offences, he is recorded once in the indictable offence section, and is also recorded once in the non-indictable offence section.

[1] Criminal Statistics, England and Wales, 1968, Introductory Note, Chapter 1, para. 6.

[2] Ranking of sentences for the purpose of tabulation is as follows (Home Office's ranking of sentences): Absolute Discharge, Recognizances, Conditional Discharge, Hospital Order, Probation, Fit Person, Fine, Attendance Centre, Detention Centre, Approved School, Committed for sentence to Sessions under S.28, Magistrates' Courts Act, 1952.

Local figures in this chapter are extracted from the Stoke-on-Trent and Leek juvenile court registers, 1968.[1] Therefore local figures include those offences that were dealt with by Stoke-on-Trent and Leek juvenile courts only. On the other hand national figures are calculated from the Criminal Statistics, England and Wales, 1968, Table Id (Magistrates' Courts - Proceedings, 14 and under 17) and Ie (Magistrates' Courts - Proceedings under 14). They include the transactions of adult magistrates' courts as well as the juvenile courts. Presumably, therefore, actual national figures for juvenile courts are slightly lower than those presented in this study. This should be taken into account when the comparisons are made between the local and national delinquency figures.

2. The Crime Rate

The crime rate is the most important indicator of criminality in an area. In the present study it was measured by the proportion of offenders actually found guilty of indictable offences by the juvenile courts in a year per 10,000 of all the juveniles in a particular area.

This method of measurement suffers from some deficiencies. The dark number of those who were not found and of those crimes which

[1]Beginning from January 1st, 1968, the police forces were amalgamated therefore Supplementary Criminal Statistics do not give separate figures for Stoke-on-Trent and the rest of Staffordshire, therefore Stoke-on-Trent and Leek figures were extracted from the juvenile court registers.

did not come to the notice of the police, and cautioning the offenders greatly affects this way of measuring the crime rate.

TABLE 8

THE CRIME RATE IN 1968

	Estimated number of juveniles (10-16 inc) in population	No. of juveniles found guilty in Magistrates Courts- Indictable Offences	No. of offenders per 10,000 of the population
England and Wales	4,661,000[1]	64,371[2]	138
Stoke-on-Trent	28,340[3]	476	167

Note: National figures on "juvenile offenders found guilty" includes those offenders which were dealt with by adult magistrates' courts as well as juvenile courts, whereas Stoke-on-Trent figure includes only those found guilty in juvenile courts.

The figures demonstrate that Stoke-on-Trent, in addition to its other social problems, has a higher crime rate than the whole country.

[1]Criminal Statistics, 1968, Introductory Note, Appendix II Males and Females.

[2]Supplementary Criminal Statistics, 1968, Group 1, Tables 1(c), 1(d).

[3]Sample Census 1966, County Report, Staffordshire, Table 3. However, it must be admitted that the proportion of juveniles in Stoke-on-Trent (10,5%) is higher than the country at large (9,5%).

In order to be sure that the high rate of juvenile delinquency in Stoke-on-Trent in 1968 is confined to that year or not, similar measurement was made for the year 1967.

TABLE 9

THE CRIME RATE IN 1967

	Estimated number of juveniles (10-16 inc) in population	No. of juveniles found guilty in Magistrates Courts- Indictable Offences	No. of offenders per 10,000 of the population
England and Wales	4,607,000[1]	60,983[2]	132
Stoke-on-Trent	28,340[3]	540[4]	183

Note: National and Stoke-on-Trent figures were extracted from the Supplementary Criminal Statistics, 1967, and both include those juveniles found guilty in adult magistrates' courts as well as the juvenile courts.

[1]Criminal Statistics, 1968, number of juvenile population is for 1967.

[2]Supplementary Criminal Statistics, 1967, Tables 1(c) and 1(d).

[3]Sample Census 1966, County Report, Staffordshire, Table 3.

[4]Supplementary Criminal Statistics, 1967, Tables 1(c) and 1(d).

The 1967 figures confirmed the high rate of juvenile delinquency in Stoke-on-Trent. However one should not rush to a definite judgement. It may well be the case that Stoke-on-Trent police force's detection rate is higher than the national average, and as will be shown later in this chapter, the police force in this area is less inclined to caution the offenders than its counterparts do elsewhere in the country. This and other factors, such as the eagerness to report the offences by the public, the policy of local police forces, the planning considerations of the area etc are factors which affect "the crime rate" in a given area.

The crime rate of Leek could not be measured in the above analysis because the age breakdown in the Census is inadequate for small authorities. Instead age groups, such as 5-14 and 15-19, are presented for urban areas with populations of 15,000 and less than 50,000. In order to get an idea of the crime rate in Leek the number of children and youths between 5 and 19 years inclusive in the whole country, Stoke-on-Trent and Leek were calculated separately. Then by using the above mentioned method of measurement the not very accurate crime rates for all three areas were found. Inevitably small children aged between 5 and 9, inclusive, and youths aged between 17 and 19 inclusive were to be included in the "juvenile" (10-16 inclusive) population. On the other hand the offenders who were dealt with in magistrates' courts were all juveniles. In spite of these shortcomings the figures below reveal the rate of crime in the country and in the two areas. Leek's crime

rate is higher than the national average but lower than the Stoke-on-Trent's.

TABLE 10

	Estimated number of children and youths aged 5-19 inclusive in population	"Juvenile" offenders dealt with in magistrates' courts in 1968 Indictable Offences	No. of offenders per 10,000 of the population
England and Wales	10,625,500[1]	64,371	60
Stoke-on-Trent	64,270[2]	476	74
Leek	4,140[3]	27	65

Note: National figures on "juvenile offenders found guilty" includes those offenders that were dealt with by adult magistrates' courts as well as by juvenile courts, whereas Stoke-on-Trent and Leek figures include only those found guilty in juvenile courts.

[1]Statistical Review 1966, Part II, Tables, Population, Table 2A, as at 30th June 1966.

[2]Sample Census 1966, England and Wales, Staffordshire, Table 3.

[3]ibid, Table 2B. The proportion of children and youths aged 5-19 is: 21,8 % in England and Wales, 23,8 % in Stoke-on-Trent and 21,5 % in Leek.

3. Analysis of the Juvenile Delinquency

The analysis of figures[1] reveal that stealing is the most commonly committed offence by juveniles in both Stoke-on-Trent (35.7 per cent) and Leek (34 per cent). They amount to one third of all offences committed by juvenile offenders. They are followed, in Stoke-on-Trent, by motoring offences (21.4 per cent) and breaking and entering offences (21.2 per cent). In Leek, on the other hand, motoring offences rank second (23.4 per cent) and followed by breaking and entering offences (14.8 per cent) and other offences (12.7 per cent). Offences such as false pretence, embezzlement (which can be committed by employees), fraud, robbery and sexual offences are very small in total delinquency figures - less than 1.5 per cent. However in Leek there were more offences of violence against person (4.2 per cent) and wilful damage (4.2 per cent) than Stoke-on-Trent, though the absolute numbers are small. Breaking and entering, and stealing offences are more common in Stoke-on-Trent than in Leek, though in the case of the latter the difference is slight.

If the figures for some offences are compared with the national averages it is seen that[2] the percentages of breaking and entering

[1] Table 11

[2] Particularly taking into account the fact that the national figures include juvenile offenders that were dealt with by adult magistrates' courts as well.

PERSONS FOUND GUILTY - NUMBER AND TYPE OF ALL OFFENCES DEALT WITH BY STOKE-ON-TRENT AND LEEK JUVENILE COURTS IN 1968

TABLE 11

	Number of offences in Stoke-on-Trent		Number of offences in Leek	
	No.	%	No.	%
Breaking and Entering	155	21.1	7	14.8
Stealing	262	35.7	16	34
Receiving	26	3.5	1	2.1
False Pretence	4	.5	0	0.
Embezzlement	2	n[1]	0	0
Fraud	1	n	0	0
Robbery	5	.6	0	0
Taking and Driving away	42	5.7	2	4.2
Arson	2	n	0	0
Wilful Damage	16	2.1	2	4.2
Indecent Assault	10	1.3	0	0
Indecent Exposure	4	.5	0	0
Violence against Person	9	1.2	2	4.2
Motoring Offences	157	21.4	11	23.4
Other Offences[2]	37	5	6	12.7
	732	100	47	100

[1] n = negligible, i.e. less than 0.5 per cent.

[2] "Other offences" include - threatening behaviour, obscene language, found drunk in a public place, play football on highway, possession of air pistol in public place.

in Stoke-on-Trent (28.9) and stealing in Stoke-on-Trent (48.8) and in Leek (53.3) are little higher than the corresponding national percentages (26.3 breaking and entering, 47.7 stealing).[1] However in Leek breaking and entering is slightly less (23.3 per cent) than the national average. On the other hand taking and driving away in both areas (7.8 per cent in Stoke-on-Trent and 6.6 per cent in Leek) is less than the national average (9.3 per cent). Though small in absolute numbers indecent assault cases are twice as much in Stoke-on-Trent (1.8 per cent) as in the whole country (0.9 per cent). No offender was dealt with as a result of a sexual offence in Leek.

To summarize the analysis of the above figures, breaking and entering, and stealing in Stoke-on-Trent, and stealing in Leek is above the national averages. Breaking and entering is less in Leek than in both Stoke-on-Trent and the whole country. On the other hand more than half of all offences dealt with by the Leek juvenile court are for stealing.

[1] Table 12

COMPARISON OF SOME OFFENCES COMMITTED BY JUVENILE OFFENDERS WHO WERE FOUND GUILTY BY STOKE-ON-TRENT AND LEEK JUVENILE COURTS WITH THE JUVENILE OFFENDERS WHO WERE FOUND GUILTY BY MAGISTRATES' COURTS IN ENGLAND AND WALES IN 1968

TABLE 12

OFFENCE	Stoke-on-Trent		Leek		National Figures	
	No.	%	No.	%	No.	%
Breaking Entering	155	28.9	7	23.3	19,730	26.3
Stealing	262	48.8	16	53.3	35,761	47.7
Receiving	26	4.8	1	3.3	3,538	4.7
False Pretences and Frauds	5	.9	0	0	322	n
Robbery	5	.9	0	0	349	n
Arson	2	n	0	0	314	n
Violence against the person	9	1.6	2	6.6	1,828	2.4
Indecent Assault	10	1.8	0	0	688	.9
Indecent Exposure	4	.7	0	0	316	n
Wilful Damage	16	2.9	2	6.6	4,962	6.6
Taking Away Driving	42	7.8	2	6.6	7,024	9.3
Total	536	100	30	100	74,832	100

Note: National figures for breaking entering, stealing, false pretences and frauds, violence against the person were calculated according to Note 2, Chapter 1, Introductory Note, Criminal Statistics, England and Wales, 1968

Offences According to Age

The data (Table 13) demonstrates that the vast majority of various types of offences were committed by the older group, i.e. young persons.[1] The younger groups, however, is responsible for two-thirds of wilful damage in Stoke-on-Trent, 62.4 per cent of stealing in Leek.[2] Apart from these, in both areas the older group is responsible for most of the offences; 72.6 per cent in Stoke-on-Trent and 74.4 per cent in Leek.

If a comparison is made between Stoke-on-Trent and Leek with the whole country for all offences, it is seen that the younger group in Stoke-on-Trent is responsible for slightly more offences (27.3 per cent) than their counterparts in Leek (25.5 per cent) and in the whole country (25.9 per cent).[3] However, in breaking and entering cases Stoke-on-Trent's average of younger group is slightly less (2.6 per cent) than the national average and nearly three times as much as Leek's (14.2 per cent) younger group.[4] So far as the stealing is concerned the younger group's average in Stoke-on-Trent

[1] Table 13

[2] Table 14

[3] Table 15

[4] Table 16

(38.9 per cent) is the same as the national average (38.4 per cent). However, Leek's younger group is responsible for 62.4 per cent of all stealing cases which is a remarkable figure.[1]

Offences According to Sex

There are generally few female offenders in this category because of differences in strength, skill, opportunity, reporting and prosecuting them. The situation in both areas under review is the same. However, the proportion of females in Stoke-on-Trent (12.7 per cent) is higher than the national average (8 per cent).[2] On the other hand only one girl was dealt with by the Leek juvenile court out of a total of 47 offenders in 1968 (2.1 per cent). In Stoke-on-Trent only 4 girls out of 155 (2.5 per cent) are responsible for breaking and entering cases.[3] However girls' share in stealing cases is 30.1 per cent.

[1] Table 17

[2] Table 18

[3] Table 19

STOKE-ON-TRENT : PERSONS FOUND GUILTY - DISTRIBUTION OF OFFENCES ACCORDING TO AGE GROUPS

TABLE 13

OFFENCE

Age Groups	Breaking Entering		Stealing		Receiving		False Pretences		Embezzlement		Fraud		Robbery		Taking and Driving away		Arson		Wilful Damage		Indecent Assault		Indecent Exposure		Violence against the Person		Motoring Offence		Other Offences		Total
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	
10-13 (inc)	62	40	102	38.9	7	27	0	0	0	0	0	0	2	40	9	21.4	1	50	11	68.7	1	10	0	0	1	11.1	0	0	4	10.8	200
14-16 (inc)	93	60	160	61	19	73	4	100	2	100	1	100	3	60	33	78.5	1	50	5	31.2	9	90	4	100	8	88.8	157	100	33	80.1	532
Total	155	100	262	100	26	100	4	100	2	100	1	100	5	100	42	100	2	100	16	100	10	100	4	100	9	100	157	100	37	100	732

10-13 (inc) 200 = 27.3%

14-16 (inc) 532 = 72.6%

LEEK : PERSONS FOUND GUILTY - DISTRIBUTION OF OFFENCES ACCORDING TO AGE GROUPS

TABLE 14

Age Groups	OFFENCE																Total
	Breaking Entering		Stealing		Taking and Driving away		Receiving		Wilful Damage		Violence against the Person		Motoring Offences		Other Offences		
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	
10-13 (inc)	1	14.2	10	62.4	0	0	1	100	0	0	0	0	0	0	0	0	12
14-16 (inc)	6	85.7	6	37.5	2	100	0	0	2	100	2	100	11	100	6	100	35
Total	7	100	16	100	2	100	1	100	2	100	2	100	11	100	6	100	47

10-13 (inc) 12 = 25.5%

14-16 (inc) 35 = 74.4%

PERSONS FOUND GUILTY OF ALL OFFENCES (INDICTABLE AND NON-INDICTABLE) COMPARISON OF STOKE-ON-TRENT AND LEEK JUVENILE COURTS WITH ALL MAGISTRATES' COURTS (10-16 inc. year old persons) IN ENGLAND AND WALES - ACCORDING TO THE AGE GROUPS

TABLE 15

Age Groups	Stoke-on-Trent		Leek		National Figures	
	No.	%	No.	%	No.	%
10-13 (inc)	200	27.3	12	25.5	30,287	25.9
14-16 (inc)	532	72.6	35	74.4	86,299	74
Total	732	100	47	100	116,586	100

Note:

1. National figures extracted from the Criminal Statistics, 1968, England and Wales. They include all juvenile offenders dealt with by Magistrates' Courts, i.e. juvenile as well as adult magistrates' courts. See Annual Tables, 1968, Tables I(d) and I(e)

2. National and local figures include indictable offences, non-indictable offences other than motoring offences, and motoring offences which are non-indictable.

PERSONS FOUND GUILTY - COMPARISON OF BREAKING AND ENTERING OFFENCES DEALT WITH BY STOKE-ON-TRENT AND LEEK JUVENILE COURTS WITH NATIONAL FIGURES - ACCORDING TO AGE GROUPS.

TABLE 16

Age Groups	Stoke-on-Trent		Leek		National Figures	
	No.	%	No.	%	No.	%
10-13 (inc)	62	40	1	14.2	8,413	42.6
14-16 (inc)	93	60	6	85.7	11,317	57.3
Total	155	100	7	100	19,730	100

PERSONS FOUND GUILTY - COMPARISON OF STEALING OFFENCES DEALT WITH BY STOKE-ON-TRENT AND LEEK JUVENILE COURTS WITH NATIONAL FIGURES - ACCORDING TO AGE GROUPS.

TABLE 17

Age Groups	Stoke-on-Trent		Leek		National Figures	
	No.	%	No.	%	No.	%
10-13 (inc)	102	38.9	10	62.4	17,734	38.4
14-16 (inc)	160	61	6	37.5	22,027	61.5
Total	262	100	16	100	35,761	100

PERSONS FOUND GUILTY OF ALL OFFENCES (INDICTABLE AND NON-INDICTABLE) - COMPARISON OF STOKE-ON-TRENT AND LEEK JUVENILE COURTS WITH ALL MAGISTRATES' COURTS (10-16 (inc) years old persons) IN ENGLAND AND WALES. - ACCORDING TO SEX.

TABLE 18

Sex	Stoke-on-Trent		Leek		National Figures	
	No.	%	No.	%	No.	%
Female	93	12.7	1	2.1	9,346	8
Male	639	87.2	46	97.8	107,240	92
Total	732	100	47	100	116,586	100

STOKE-ON-TRENT : PERSONS FOUND GUILTY - DISTRIBUTION OF OFFENCES ACCORDING TO SEX

TABLE 19

Sex	Breaking Entering		Stealing		Receiving		False Pretences		Embezzlement		Fraud		Robbery		Taking and Driving away		Arson		Wilful Damage		Indecent Assault		Indecent Exposure		Violence against the Person		Motoring Offences		Other Offences		Total
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	
Female	4	2.5	79	30.1	1	3.8	1	25	0	0	0	0	0	0	0	0	0	0	1	6.2	0	0	0	0	1	11.1	5	3.1	1	2.7	93
Male	151	97.4	183	69.8	25	96.1	3	75	2	100	1	100	5	100	42	100	2	100	15	93.7	10	100	4	100	8	88.8	152	96.8	36	97.2	639
Total	155	100	262	100	26	100	4	100	2	100	1	100	5	100	42	100	2	100	16	100	10	100	4	100	9	100	157	100	37	100	732

Female 93 = 12.7%

Male 639 = 87.2%

4. Police Cautioning

The significance of a high or a low rate of crime rate and consequently of any sentence imposed by a court also depends on the selection of cases which are prosecuted. Among the factors which determine this selection is police cautioning. High crime rates based on court cases may be sometimes due to a reluctance on the part of the police to use its powers of cautioning. Such a result was confirmed in a study carried out by Grunhut.[1]

In England and Wales the police are obliged by law to report certain serious offences to the Director of Public Prosecutions, but otherwise exercise their discretion not to prosecute an offender before a criminal court, but instead to administer a formal caution to the offender at the local police headquarters. After examining the official reports of some 300 cases in five towns, D. Steer has put into four broad categories the principal reasons given for cautioning offenders instead of bringing them before a court:[2]

1) Complainant declined to prosecute

2) Victim a voluntary participant

3) Evidence insufficient; this may cause some surprise because the formal cautions should only be recorded when there is sufficient evidence to warrant prosecution and the accused does not deny his guilt.

4) Offenders' circumstances, i.e. very young (10, 11 yrs old) or very old age, illness, mental instability.

[1] M. Grunhut, op. cit., 1956, pp. 63-68.

[2] D. Steer, "Police Cautions - a Study in the Exercise of Police Discretion", 1970, cited by A.F. Wilcox, "Police Cautions in Five Towns", in Crim. Law Review, [1971], p. 516.

In another study it was discovered "that in the majority of cases where cautions were administered the offences were of a very minor character; but an examination of the records of those cautioned indicates that there are considerable variations from one police force to another as to the sort of 'minor offence' for which the police caution is considered the most appropriate form of action".[1]

In 1927 the Molony Committee gave approval to the police system of cautioning juveniles; they, however, felt strongly that its widespread use would be usurping the functions of a tribunal and was therefore outside the proper duties of the police.[2] In 1960 the Ingleby Committee reaffirmed the cautioning by police.[3]

Some police forces developed a practice, which was launched in 1949 by the Chief Constable of Liverpool, termed "juvenile liaison schemes". These take different forms, but the essential feature of each is that a child who is cautioned may be placed under police supervision for a period which may be as much as a year.[4] This is

[1] F.H. McClintock and N.H. Avison, "Crime in England and Wales", 1965, p.160.

[2] Report of the Departmental Committee on the Treatment of Young Offenders, 1927, Cmd. 2831. H.M.S.O.

[3] Report of the Committee on Children and Young Persons, 1960, Cmnd. 1191, para. 138. H.M.S.O.

[4] N. Walker, "Crime and Punishment in Britain", 1965, p. 179.

done if the offender admits the offence and the parents' give their consent. The Ingleby Committee commended the Schemes but advised against extending them.[1]

In Stoke-on-Trent the juvenile liaison scheme was established in June 1964. Members of the team who were selected from the Crime Prevention Department, devoted all their time to juvenile offenders. They enlisted the co-operation of the offenders' school and other agencies. However, the scheme had been dissolved when the Staffordshire County and Stoke-on-Trent Police (Amalgamation) Order, 1967, came into force on 1st January 1968. Therefore at the time of the present study there was no such scheme in Stoke-on-Trent.

The following figures reveal the low rate of cautioning in Stoke-on-Trent in comparison with the national average. Accordingly, it could be suggested that the low rate of cautioning is one of the important explanations of the high crime rate in this area.

[1]Report of the Committee on Children and Young Persons, 1960, para. 147, H.M.S.O.

NUMBERS AND PERCENTAGES OF CAUTIONS ADMINISTERED IN THE CASE OF "JUVENILE OFFENDERS" FOR INDICTABLE OFFENCES IN 1968.

TABLE 20

	Total of juvenile offenders found guilty in magistrates' courts (Indictable Offences)	Total of juvenile offenders found guilty in magistrates' courts AND total of juvenile offenders cautioned (Indictable Offences)	Percentages of Cautions
England and Wales	64,371[1]	90,130[2]	28.5
Stoke-on-Trent	476	654[3]	27.2

Note:

1. National figures include all juvenile offenders found guilty in adult magistrates courts as well as juvenile courts, whereas Stoke-on-Trent figures include only those offenders who were found guilty in juvenile courts. Having taken account of this fact it is clear that Stoke-on-Trent's percentage is even lower than 27.2 per cent.

2. As the numbers of cautions administered by the Leek Police Force were not made available it was not possible to determine the rate of cautions in this area.

[1] Criminal Statistics, 1968, Annual Tables, I(d) and I(e).

[2] 25,759 cautions were administered in the case of juvenile offenders in England and Wales, in 1968. See Criminal Statistics, 1968, Introductory Note, Chapter IX.

[3] 178 cautions were administered in the case of juvenile offenders in Stoke-on-Trent in 1968. Information was kindly supplied by the Staffordshire County and Stoke-on-Trent Constabulary.

CHAPTER 9

THE SENTENCING POLICY OF THE STOKE-ON-TRENT AND LEEK JUVENILE COURTS.

1. General Considerations

English juvenile courts have two broad possibilities in dealing with juvenile offenders. They may send him away from home either for constructive treatment or merely as a punishment, for this reason they place him into the care of a fit person, order detention in a remand home, send him to a detention centre if he is in the 14-16 age group, or commit him to an approved school. They may feel that there is no need to send him away from home and in this case, either they may take no action at all and discharge the juvenile offender absolutely or conditionally, or they may resort to punishment and fine him or order him to attend an attendance centre (for boys only) on Saturday afternoons. If they feel a constructive treatment is necessary they may put the offender on probation.

2. Fallacious Comparisons

It is important to realize that it is fallacious to compare the severity of different types of offences from the sentences attached to them, since the statistics do not distinguish between first offenders, and offenders who, having criminal records, tend to receive more severe sentences. Nor do they distinguish between juvenile offenders who have personal background problems, and those juvenile offenders who have no such problems. Therefore the only sound comparison would be confined to first offenders convicted of

both sorts of offence. This type of comparison will not be made in this chapter, but during the course of the analysis of the various factors in juvenile court sentencing.

3. The Sentencing Policy of both Courts

Analysis begins by an investigation of the trends in the sentencing policy of both courts. Sentences imposed in all indictable and non-indictable offences demonstrate that 33.9 per cent of them were dealt with were conditional discharges and further 29.3 per cent were fined in Stoke-on-Trent, whereas in Leek only 13 per cent of all cases disposed with conditional discharges and 26 per cent were fined.[1] Absolute discharges were granted in few cases in Stoke-on-Trent (1.2 per cent), but they were granted in 10.8 per cent of all cases in Leek. None of the sentences such as - fit person, detention centre, and attendance centre[2] were made in Leek, and only one approved school order imposed in a "malicious injury to the property" case where the offender had already been on probation on two different times. In Stoke-on-Trent the use made of fit person (0.9 per cent) and detention centre (n) is negligible; detention in a remand home was totally ignored by the courts in both areas. In fact no such sentence was imposed in Staffordshire in 1968.[3] However, in contrast

[1] Table 21

[2] Leek Magistrates told the "attendance centre is not within easy reach for the offenders". Attendance centre is 12 miles away from Leek.

[3] Supplementary Criminal Statistics, 1968, Group 1, Tables 1(c) and 1(d).

PERSONS FOUND GUILTY - SENTENCES GIVEN BY STOKE-ON-TRENT AND LEEK JUVENILE COURTS (INDICTABLE AND NON-INDICTABLE OFFENCES)

TABLE 21

Sentence	Stoke-on-Trent		Leek	
	No.	%	No.	%
Absolute Discharge	9	1.2	5	10.8
Conditional Discharge	248	33.9	6	13
Fine	214	29.3	12	26
Attendance Centre	45	6.1	0	0
Probation Order	172	23.5	22	47.8
Fit Person	7	.9	0	0
Detention Centre	2	n	0	0
Approved School	33	4.5	1	2.1
Total	730	100	46	100

Two "Committal to Sessions for sentence, Magistrates Courts Act, s. 28" from Stoke-on-Trent, and one same sentence from Leek were exoluded.

to Leek, attendance centre and approved school orders, though in small amounts, were passed in 6.1 per cent and 4.5 per cent of all cases in Stoke-on-Trent respectively. Probation orders were imposed in slightly less than half of all cases in Leek (47.8 per cent) but only in 23.5 per cent of all cases in Stoke-on-Trent.

On the other hand the analysis of the distribution of sentences for each type of offence demonstrates that in Stoke-on-Trent 68.6 per cent of fines, in Leek 75 per cent, were imposed in the case of, what is regarded as trivial, motoring offences such as carrying an unqualified passenger, failure to display L plates, no number plates and no insurance.[1] Apart from the fines, only 14.9 per cent of conditional discharges, 42.2 per cent of attendance centres, 38.9 per cent of probations, 42.8 per cent of fit person orders, all detention centre orders (altogether two) and 54.5 per cent of all approved school orders were imposed on breaking and entering offences in Stoke-on-Trent. In Leek all but one breaking and entering cases were dealt with by probation.

Again in Stoke-on-Trent three out of nine absolute discharge orders were made in stealing cases. 61.6 per cent of conditional discharges, 28.8 per cent of attendance centre orders, 38.9 per cent of probations, four out of total seven fit persons, and 21.2 per cent of all approved schools orders were made in stealing cases. In Leek on stealing case absolutely discharged,[2] four were disposed with conditional discharges

[1] Tables 22 and 23

[2] The social enquiry report could not be found in this case.

PERSONS FOUND GUILTY - DISTRIBUTION OF SENTENCES FOR EACH TYPE OF OFFENCE (STOKE-ON-TRENT)

TABLE 22

Offence	SENTENCE																
	Absolute Discharge		Conditional Discharge		Fine		Attendance Centre		Probation Order		Fit Person		Detention Centre		Approved School		
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	
Breaking/Entering	0		37	14.9	7	3.2	19	42.2	67	38.9	3	42.8	2	100	18	54.5	
Stealing	3	33.3	153	61.6	15	7	13	28.8	67	38.9	4	57.1	0		7	21.2	
Taking and Driving Away	3	33.3	13	5.2	10	4.6	4	8.8	12	6.9	0		0		0		
Receiving	0		15	6	2	.9	2	4.4	6	3.4	0		0		1	3	
False Pretence	0		0		2	.9	0		2	1.1	0		0		0		
Fraud	0		0		1	n	0		0		0		0		0		
Embezzlement	0		0		1	n	0		0		0		0		1	3	
Robbery	0		2	.8	0		0		1	.5	0		0		2	6	
Wilful Damage	0		7	2.8	2	.9	2	4.4	5	2.8	0		0		0		
Arson	0		0		0		0		1	.5	0		0		1	3	
Violence against a person	0		3	1.2	3	1.4	0		2	1.1	0		0		1	3	
Indecent Assault	0		0		0		4	8.8	4	2.3	0		0		2	6	
Indecent Exposure	0		3	1.2	0		0		1	.5	0		0		0		
Motoring Offences	0		7	2.8	147	68.6	1		2	1.1	0		0		0		
Other Offences	3	33.3	8	3.2	24	11.2	0		2	1.1	0		0		0		
Total	9	100	248	100	214	100	45	100	172	100	7	100	2	100	33	100	= 730 Grand Total

1. Two "Committal to Sessions for sentence, M.C.A., s. 28" were excluded. Both were made in breaking and entering cases.

2. n = less than 0.5 per cent.

PERSONS FOUND GUILTY - DISTRIBUTION OF SENTENCES FOR EACH TYPE OF OFFENCE (LEEK)

TABLE 23

Offence	SENTENCE									
	Absolute Discharge		Conditional Discharge		Fine		Probation Order		Approved School	
	No.	%	No.	%	No.	%	No.	%	No.	%
Breaking/ Entering			1	16.6			5	22.7		
Stealing	1	20	4	66.6			11	50		
Receiving			1	16.6						
Taking and Driving away							2	9		
Wilful Damage					1	8.3			1[1]	100
Violence against a Person							2	9		
Motoring Offences	2	40			9	75				
Other Offences	2	40			2	16.5	2	9		
Total	5	100	6	100	12	100	22	100	1	100

Grand Total = 46

1. One "Committal to Sessions for sentence, M·C.A., s. 28" in the case for breaking and entering was excluded.

2. Attendance Centre, Fit Person and Detention Centre were not made by the Leek juvenile court in 1968.

[1]This is a "malicious injuries to property" case which is an indictable offence.

and the rest of them, eleven cases, were put on probation.

Comparison of sentences imposed in the case of indictable offences in both areas and in England and Wales demonstrate that conditional discharges were imposed in 44.3 per cent of all cases in Stoke-on-Trent, whereas, the corresponding percentages for Leek and the whole country were 23 and 24.2 respectively.[1] On the other hand the use made of fines was much below the national average (26.9 per cent) in Stoke-on-Trent (6.5 per cent). As far as the probation is concerned Stoke-on-Trent's average (31.6 per cent) is a little higher than the national average (28.1 per cent); Leek, however, is a high probation area (69.1 per cent). In the case of sentences involving removal from home is concerned, Stoke-on-Trent's averages are the same as the corresponding national averages, whereas in Leek one approved school order was made in 1968 (excluding one case of "committal to quarter sessions with a view to Borstal sentence").

4. Summary and some Considerations

To sum up the analysis of the sentencing trends of both courts in 1968; the rate of probation was significantly higher in Leek in comparison with Stoke-on-Trent and England and Wales,[2] whereas the

[1] Table 24

[2] Stoke-on-Trent's value for probation was slightly higher than the average for the whole country.

PERSONS FOUND GUILTY - COMPARISON OF SENTENCES GIVEN BY STOKE-ON-TRENT AND LEEK JUVENILE COURTS WITH THE NATIONAL FIGURES (MAGISTRATES' COURTS). INDICTABLE OFFENCES ONLY.

TABLE 24

Sentence	Stoke-on-Trent		Leek		National Figs.	
	No.	%	No.	%	No.	%
Absolute Discharge	3	.6	1	3.8	1374	2.2
Conditional Discharge	210	44.3	6	23	15130	24.2
Fine	31	6.5	0		16812	26.9
Attendance Centre	38	8	0		5196	8.3
Probation	150	31.6	18	69.1	17575	28.1
Detention in a Remand Home	0		0		246	n
Fit Person	7	1.5	0		1220	1.9
Detention Centre	2	n	0		1053	1.6
Approved School	33	6.9	1	3.8	3839	6.1
Total	474	100	26	100	62445	100

1. "Committal to Quarter Sessions for sentence, M.C.A., 28", were excluded from all three columns.

2. "Otherwise dealt with" was exluded from the national figures. There was no such group in Stoke-on-Trent.

3. National figures calculated from "Supplementary Statistics Relating to Crime and Criminal Proceedings, 1968", Group 1, Tables 1(c) and 1(d). They include all juvenile offenders dealt with by Magistrates' Courts, i.e. juvenile as well as adult magistrates' courts.

same thing can be said for conditional discharges in Stoke-on-Trent. Fines, on the other hand, were rare in the case of indictable offences in both areas, in fact there were none in Leek. Sentences involving removal from home were almost negligible in Leek; in Stoke-on-Trent the corresponding percentages were similar to the national averages, except detention centre where its usage was negligible.

In this chapter various characteristics of offenders[1] were not controlled, therefore, it is impossible to reach a concrete conclusion on the sentencing policies of both courts. However, the differences in the use of probation and conditional discharge in both areas are so significant that it is almost impossible to end the chapter without making any comments.

First, widely differing approaches in the use of particular sentences in both courts could be due to the fact that one is an urban area and the other is a rural one. In an urban area there is little likelihood of the magistrates knowing the offender; this is certainly not likely to be the case in Leek. Besides in an urban area the magistrates who serve on the probation committee will be aware of the danger of overburdening the local probation officers. The probation officers themselves may, perhaps sub-

[1]Such as, the degree of their welfare problems and needs, whether they were first offenders or not.

consciously, become more selective in recommending the probation orders. It may also be connected with the burden on the urban courts since they have a higher number of cases per bench than the rural courts.

Secondly, the low rate of cautioning in Stoke-on-Trent in comparison with the national average may be at least a partial explanation for the high rate of conditional discharge in this area, since it could be assumed that the relatively minor offences flocked the courts and accordingly the courts responded with conditional discharges.

Third, wide variations in the use of particular orders may suggest basic differences in the approach to the selection of sentences. Strong views on fundamental questions of the philosophy of penal methods: the "reformative" element of probation may be more attractive to some benches than to others. Therefore the requirement of presenting the court's decision in reasoned form would give an idea on the penal philosophy of the bench.

The fourth point is that the attendance centre was not available to the Leek juvenile court. This certainly contributed to the difference between the rate of various sentences made by the courts in both areas.

The fifth comment can be made from the methodological point of

view. The results are inevitably tentative in that they are based on the data relating to one year only and thus may not reflect the real trends in both areas.

Finally it should be stated that one of the criticisms most frequently heard censures magistrates for widely differing sentences imposed by different courts in cases which are apparently identical. However, much of this criticism is wrong in that strict uniformity may in fact reflect a failure by the magistrates to take into account all the relevant factors when judging cases on their individual merits.

This summary, thus, has brought out the salient differences between the two areas and National data. However, these points are based on published statistics and in order to learn more about the magistrates and the offenders they dealt with, it is necessary to use more precise methods of enquiry. These methods and the results which they give will be described in the ensuing chapters.

CHAPTER 10

VARIOUS CHARACTERISTICS OF STOKE-ON-TRENT AND LEEK MAGISTRATES

This chapter will focus attention upon demographic, social background and social attitudinal characteristics of Stoke-on-Trent and Leek juvenile court magistrates. In the first part, age, sex, marital status, number of children, social class, educational background, experience on the juvenile bench and "reported other work with juveniles" will be described. The second part will consider off-the-bench social attitudes of a sample of magistrates, in particular, their attitudes toward long-run social changes. In the third part magistrates' social attitudes will be related to their personal and social background characteristics.

Data bearing various personal, social background and social attitudinal characteristics of sample magistrates were collected from the information supplied by the magistrates' clerks offices in both areas and from the interviews carried out with the magistrates. There were twenty-nine juvenile court magistrates, sitting in three rotas, in Stoke-on-Trent in 1968. Twenty-five of these agreed to be interviewed. One magistrate out of the twenty-five failed to answer all the questions.

Effectively therefore, the Stoke-on-Trent sample consists of twenty-four magistrates. In Leek there were ten juvenile court magistrates in 1968. All except one consented to be interviewed. However, three of them did not answer the questions fully. Accordingly, they were excluded from the sample too. Therefore

there are six magistrates in the Leek sample. The following comparisons and analyses regarding the juvenile court magistrates in both districts will be based on twenty-four Stoke-on-Trent and six Leek magistrates.

I - PERSONAL AND SOCIAL BACKGROUND CHARACTERISTICS OF MAGISTRATES

1. Age

Section 14 of the Statutory Rules, made under the Justices of the Peace Act, 1949, provide that no magistrate (other than a Stipendiary Magistrate holding office as such) shall be a member of a panel after he has attained the age of sixty-five. This requirement was recommended in the Report of the Royal Commission on Justices of the Peace, 1948,[1] which also stated that the most suitable age for a first appointment to the juvenile panel was between thirty and forty and that, save in exceptional circumstances, no one should be appointed for the first time when over the age of fity.

The recommendations clearly intend that juvenile court magistrates should be in the normal age range of experienced parents or grandparents, but no older. No further changes in these arrangements were suggested by the Ingleby Committee in 1960. As the data demonstrates the mean age of Stoke-on-Trent and Leek magistrates are

[1] Cmnd. 7463, para. 185, H.M.S.O.

virtually the same; i.e. 51.2 and 51.5 respectively.[1] They are well within the normal age range of experienced parents.

2. Sex

According to the Second Schedule of the Children and Young Persons Act 1933, there must be at least two magistrates sitting on the bench if they are lay justices (the stipendiary can sit alone as he can in his other courts), but not more than three. One of the magistrates should, if possible, be a woman, and in emergency two women may sit alone. The idea behind this is, women have more understanding of children than men, therefore their presence is essential on a bench which deals with children.

In both of the areas during 1968 at least one of the magistrates who sat on each session were women. The distribution of female magistrates in either courts is as follows: nearly half of the Stoke-on-Trent (fourteen out of twenty-nine) and half of the Leek magistrates are women.

3. Marital Status and Number of Children

It will be described later that the juvenile court magistrates are to be selected among men and women who have "love and appreciation

[1]Table 25

AGES OF 24 STOKE-ON-TRENT AND 6 LEEK MAGISTRATES

TABLE 25

Age Groups	24 Stoke-on-Trent Magistrates		6 Leek Magistrates	
	No.	%	No.	%
35-40	1	4.10	0	0
41-45	3	12.50	1	16.6
46-50	4	16.60	1	16.6
51-55	11	45.8	3	50
56-60	4	16.60	1	16.6
61-65	1	4.10	0	0
Total	24	100	6	100

Mean age of 24 Stoke magistrates : 51.2

Mean age of 6 Leek magistrates : 51.5

for children". No doubt marriage provides one of the appropriate settings for the flourishing of such understanding and experience. The average number of children of Stoke-on-Trent magistrates is: 2.08, whereas the corresponding number of Leek magistrates is: 2.83.[1] The comparison of average number of children of Stoke-on-Trent magistrates with the average number of children of offenders' families (4.41)[2] demonstrates the larger size of the latters family. This is true in the Leek sample too where the average number of children of offenders' families is: 4.16. The average number of children of magistrates and offenders is one of the indicators of the social composition of the benches and offenders, which will be described in due course.

4. Educational Background

None of the Leek magistrates, but five out of twenty-four Stoke-on-Trent magistrates received only Elementary education.[3] Ten Stoke-on-Trent magistrates received only grammar, or possibly public school education; whereas the corresponding percentage for Leek is 33.3. However, two-thirds of all Leek magistrates received University or similar types of education, the percentage is 37.3 for Stoke-on-Trent magistrates. The data demonstrates the higher formal educational level of the Leek bench.

[1]Table 26

[2]Table 27

[3]Table 28

NUMBER OF CHILDREN OF 23 MARRIED STOKE MAGISTRATES

AND 6 MARRIED LEEK MAGISTRATES

TABLE 26

Number of Children	23 Stoke-on-Trent Magistrates		6 Leek Magistrates	
	No.	%	No.	%
0	3	13	1	16.6
1	3	13	1	16.6
2	8	34.7	1	16.6
3	7	30.4	1	16.6
4	2	8.6	0	0
5	0	0	1	16.6
6	0	0	1	16.6
Total	23	100	6	100

Note: One unmarried Stoke-on-Trent magistrate excluded from the Table.

Average number of children:

23 Stoke-on-Trent magistrates - 2.08 (2)

6 Leek magistrates - 2.83 (3)

NUMBER OF CHILDREN IN OFFENDERS' FAMILIES

TABLE 27

Number of Children	STOKE-ON-TRENT Number of Families	LEEK Number of families
One	15	0
Two	57	3
Three	65	5
Four	41	9
Five	54	3
Six	47	-
Seven	53	4
Eight	11	-
Nine	2	-
Eleven	1	-
Total	346	24

STOKE-ON-TRENT:

Total number of children in offenders' families - 1528

Average number of children - 4.41

LEEK:

Total number of children in offenders' families - 100

Average number of children - 4.16

AGE OF FINISHING FULL-TIME EDUCATION OF 24 STOKE-ON-TRENT AND 6 LEEK MAGISTRATES

TABLE 28

Ages of finishing full-time education	24 Stoke-on-Trent Magistrates		6 Leek Magistrates	
	No.	%	No.	%
14	4	16.6	0	0
15	1	4.1	0	0
16	4	16.6	2	33.3
17	2	8.3	0	0
18	4	16.6	0	0
21	4	16.6	3	50
22	3	12.5	0	0
24	1	4.1	1	16.6
25	1	4.1	0	0
Total	24	100	6	100

Average age of finishing full-time education for 24 Stoke magistrates : 18.3

Average age of finishing full-time education for 6 Leek magistrates : 19.8

5. Selection of Magistrates and the Social Class Composition of the Benches

The present method of lay magistrates' appointment is elaborate. It is not laid down by any Act of Parliament. On the face of it, they are simply appointed by the Lord Chancellor in the name of the Queen.[1] The Chancellor receives recommendations from "advisory Committees", themselves magistrates, in each county. The membership of the advisory committees is secret but the secretaryships are known. Their job is to find the men and women who are best qualified to be magistrates and to recommend them for appointment. Of course the members of the advisory committees, being magistrates, are themselves the products of earlier operations of this "recommendation" system. The Royal Commission on Justices of the Peace, 1948, thought that the system tended to restrict itself to certain sections of the community for candidates for appointment as justices, and put forward "the dominance of political representation on advisory committees" as one of the reaons.[2]

Data based on the social class composition of the Stoke-on-Trent and Leek juvenile benches demonstrates that employers and

[1] In London, juvenile courts are set up directly by the Secretary of State.

[2] Report of the Royal Commission on Justices of the Peace, 1948, Cmnd., 7463, para. 72. H.M.S.O.

proprietors (25 per cent in Stoke, 50 per cent in Leek), managers and administrators (including three trade unionists, 25 per cent in Stoke, none in Leek) and especially higher professionals (45.8 and 50 per cent in Stoke-on-Trent and in Leek respectively) are dominant on the benches in both areas.[1]

The "Classification of Occupations", 1966 (H.M.S.O.) was taken as a basis in order to examine and compare the social classes of the magistrates and the offenders' parents. In Stoke-on-Trent all except one (95.8 per cent) of the magistrates belong to classes 1 and 2, whereas 94 per cent of all the heads of families of offenders are in classes 3, 4 and 5. A more extreme situation can be observed in the Leek sample where all the magistrates belong to classes 1 and 2, whereas all the heads of the families of offenders are in classes 3, 4 and 5.[2]

Data demonstrates that two different social classes face each other in the court, one is sitting as a magistrate, the other as a defendant. It seems that as one author writes "the juvenile court is essentially for the less well-to-do; presumably the better-off members of society can be relied upon to discipline their own offspring effectively and keep them on the rails".[3]

[1] Table 29. In the case of housewives, their husbands' socio-economic position is considered.

[2] Table 30. For offenders' families see Ch. 8, Tables 4 and 5.

[3] T.E. James, "Children and the Law", 1965, p. 74.

SOCIAL CLASS OF 24 STOKE-ON-TRENT AND 6 LEEK MAGISTRATES

(According to "Research Papers (No.6), Donovan Report, 1967", Table 1.)

TABLE 29

Social Classes	24 Stoke-on-Trent Magistrates		6 Leek Magistrates		Relevant Occupational Groups as a Percentage of Total Occupied Population in 1961
	No.	%	No.	%	%
1. Employers and Proprietors	6	25	3	50	4.7
2. All White-Collar Workers					
a) Managers and Administrators	6	25	0	0	5.4
b) Higher Professionals	11	45.8	3	50	3.0
c) Lower Professionals and Technicians	0	0	0	0	6.0
d) Foremen and Inspectors	0	0	0	0	2.9
e) Clerks	0	0	0	0	12.7
f) Salesmen and Shop Assistants	0	0	0	0	5.9
3. All Manual Workers	1	4.1	0	0	59.3
Total	24	100	6	100	100

SOCIAL CLASS OF 24 STOKE-ON-TRENT AND 6 LEEK MAGISTRATES

(According to "Classification of Occupations, 1966", H.M.S.O.)

TABLE 30

Classification of Occupations	24 Stoke-on-Trent Magistrates		6 Leek Magistrates	
	No.	%	No.	%
1	4	16.6	2	33.3
2	19	79.2	4	66.6
3	1	4.1	0	0
4 and 5	0	0	0	0
Total	24	100	6	100

6. Selection to the Juvenile Bench

No special provisions were made in the Children Act, 1908, which had set up the juvenile courts, as to their constitution. In 1927, the Committee on Young Offenders rejected the idea that any age limit or selection by professional qualifications, educational or otherwise, would secure inevitably the right choice of magistrates for this work, but thought that experience of social work among youth would be a valuable asset. The qualities which are "needed in every magistrate who sits in a juvenile court are a love of young people, sympathy with their interests, and an imaginative insight into their difficulties. The rest is largely common sense".[1] In 1949 the Home Office in a circular letter reminded justices' clerks that the Rules required the appointment of people "who are specially qualified for dealing with juvenile cases". In a later letter dated 1952 the Secretary of State again used the phrase "specially qualified" but did not give any further guidance on this matter.[2]

So far as the Stoke-on-Trent and Leek juvenile court magistrates' off-the-bench and experience with youths are concerned thirteen out of twenty-four Stoke-on-Trent and two out of six Leek Magistrates reported that they were involved in some kind of work with Youth.[3]

[1]Report of the Departmental Committee on the Treatment of Young Offenders, Cmnd., 2831, 1927, p. 25.

[2]Cited by W. Cavenagh, "Juvenile Courts, the Child and the Law", 1967, p. 72.

[3]Table 31

REPORTED "OTHER WORK" WITH JUVENILES

24 STOKE-ON-TRENT AND 6 LEEK MAGISTRATES

TABLE 31

	24 Stoke-on-Trent Magistrates		6 Leek Magistrates	
	No.	%	No.	%
Other work Reported	13	54.1	2	33.3
No Other work Reported	11	45.8	4	66.6
Total	24	100	6	100

These activities were: Schoolteacher's usual professional activity, social work with children, work with boy scouts and girl guides and activity in the youth clubs. Findings reveal that the Leek magistrates experience with children outside the court is less than their Stoke-on-Trent colleagues.

Data relating to the magistrates' on-the-bench experience, demonstrate that almost half (49.9 per cent) of the Stoke-on-Trent and one third of all Leek magistrates have been on the juvenile bench between one and three years.[1] Another one third of the Leek magistrates have been on the bench between three and seven years, whereas the corresponding percentage is 16.6 for Stoke-on-Trent magistrates. One third of all Stoke-on-Trent and Leek magistrates have been sitting on the bench for more than seven years. When the duration of juvenile court magistracy is calculated for each magistrate separately[2] the data demonstrate that as an average Stoke-on-Trent magistrates have slightly (5.6 years) more experience on the juvenile bench than their Leek colleagues (5 years).

[1] Table 32

[2] Not shown in the Tables

DURATION OF JUVENILE COURT MAGISTRACY OF

24 STOKE-ON-TRENT AND 6 LEEK MAGISTRATES

TABLE 32

Duration of Juvenile Court Magistracy	24 Stoke-on-Trent Magistrates		6 Leek Magistrates	
	No.	%	No.	%
1 year	7	29.1	1	16.6
2-3 years	5	20.8	1	16.6
4-5 years	4	16.6	1	16.6
6-7 years	0	0	1	16.6
8-10 years	3	12.5	2	33.3
11-15 years	3	12.5	0	0
16 years	2	8.3	0	0
Total	24	100	6	100

7. The Training of the Magistrates

The magistrates have to administer a sophisticated and detailed legal system. Until a few years ago they were not given any elaborate training. Such training was not officially considered until 1946, when the Royal Commission on Justices of the Peace was appointed. The Commission recommended that new magistrates should be given some instruction.[1] This recommendation was not implemented. Instead the Lord Chancellor's office and the Magistrates' Association co-operated in preparing a course of instruction which could be sent to magistrates by post. The Government decided that compulsory training must apply to all magistrates appointed in England and Wales after the 1st January 1966. This obligatory training is limited to a basic course of instruction for all magistrates newly appointed to the Commission and to a special course of instruction for those magistrates who are appointed to the juvenile court panels.[2] Both courses of instruction consist of two stages and are carried out in accordance with a syllabus prepared by the National Advisory Council on the Training of Magistrates. There are also courses arranged on a voluntary basis, which include visits to penal institutions. The training of juvenile court magistrates is designed for the following purposes:[3]

[1] The Royal Commission on the Justice of the Peace, 1948, Cmnd. 7463, paras. 89, 90. H.M.S.O.

[2] The Training of Justices of the Peace in England and Wales, December 1965, Cmnd. 2856, para. 21. H.M.S.O.

[3] ibid., "Syllabus for Training of Juvenile Court Justices", Appendix B.

a) To understand the procedure in the juvenile court.

b) To appreciate the social and educational background of juveniles before the court.

c) To know the services available to them, and to learn the sentences which they can make in dealing with juvenile offenders and juveniles who are in need of care, protection or control.

The consequences of the legislation relating to training would suggest that one-half of the Stoke-on-Trent and one third of the Leek magistrates would have received compulsory training. Subsequent interviewing demonstrated that this was indeed the case.[1] Slightly more than half of all the Stoke-on-Trent magistrates (54.1 per cent) and one third of the Leek magistrates visited all the penal institutions where they commit the juveniles whom they dealt with.[2] However, one third of the Stoke-on-Trent magistrates did not see the attendance centre which is not far from their courts. Two out of twenty-four Stoke-on-Trent and two out of six Leek magistrates seem to have no idea of what kind of a place a remand home is.

[1] Table 32

[2] Table 33

PENAL INSTITUTIONS VISITED

TABLE 33

Penal Institutions Visited	24 Stoke-on-Trent Magistrates		6 Leek Magistrates	
	No.	%	No.	%
ALL	13	54.1	2	33.3
All except Approved School	1	4.1	1	16.6
All except Attendance Centre	8	34.6	1	16.6
All except remand Home	1	4.1	1	16.6
All Except Remand Home and Approved School	1	4.1	0	0
Visited Detention Centre only	0	0	1	16.6
NONE	0	0	0	0
Total	24	100	6	100

II - SOCIAL ATTITUDINAL CHARACTERISTICS OF MAGISTRATES

1. General Considerations

In the following chapter sentencing attitudes of the sample of magistrates will be analysed, and then an attempt will be made to correlate them with the social attitudes of magistrates. In order to do this a questionnaire was necessary. The questionnaire was designed to determine the degree of liberalism of the respondents. Liberalism, as used in this study, refers to a viewpoint associated with acceptance of long-run social change. The term Conservatism, on the other hand, is used to refer to a viewpoint associated with resistance to long-run social change. Since liberalism is used here as a variable concept, one cannot really be considered a liberal or a conservative in an absolute sense, but only as more, less, or equally liberal or conservative in comparison with someone else. The liberalism-conservatism test was chosen in preference to other attitudinal or personality measures because it seemed to represent the frame of mind most likely to account for magistrates' overt behaviour when making sentences.

Various studies have shown that liberalism is composed of or correlated with a number of sub-attitudes.[1] In other words an individual who holds Belief A is also apt to hold Beliefs B, C

[1] H. Eysenck, "Psychology of Politics", 1954; W.A. Kerr, "Correlates of Political-Economic Liberalism-Conservatism", Journal of Social Psychology, Vol. 20 (1944) pp. 61-77; G.B. Vettor, "What makes attitudes and opinions Liberal or Conservative", Journal of Abnormal and Social Psychology, Vol. 42, 1947.

and D, but not Beliefs E, F and G, that a liberal in one sphere is frequently a liberal in others. The sub-attitudes in the present study which are correlated with liberalism include:

(1) Democraticness (we need more controversy and political discussion on radio or television).

(2) Criminal rehabilitationism (our treatment of adult offenders is too harsh; death penalty should not be restored).

(3) Approval of marital and family planning (abortion should be legal; it is right and proper that the law made divorce easier).

(4) Religiosity (religious education in schools should not be compulsory).

The items in the questionnaire were selected with some modifications from the forty items in a liberalism inventory devised by Hans Eysenck.[1] In order to explain why the Eysenck liberalism inventory is chosen, it is necessary to consider some other inventories first.

2. Various Inventories

In their well-known research "The Authoritarian Personality", the research workers undertook to measure anti-Semitism, ethnocentrism, political-economic conservatism, and finally, potential fascism in

[1] H. Eysenck, op. cit.

the personality.[1] However, their scale is related to Political-Economic Conservatism, and is especially lacking the items relating to family planning, such as "divorce laws should be easier" and "abortion should be legal" and "democraticness". Another Conservatism-Radicalism Scale, which was administered to members of different social classes, was designed to investigate the political conservatism of its subjects.[2] It does not have items on criminal rehabilitationism, religiosity, family planning and democraticness. A third study which deals with personality and social change, designed a "political-economic progressivism" scale.[3] This, too, leaves out the items on family planning and religiosity.

On the other hand R. Brown criticizes the two groups of beliefs that are attributed to Eysenck to liberals and conservatives on the basis that they do not reflect the views of these two groups clearly. He claims that the clusters of statements are a rather heterogeneous collection.[4] Having taken into account this criticism in the present study these items were selected with the

[1] T. Adorno, et. al., "The Authoritarian Personality", 1950, p. 153.

[2] R. Centers, "Psychology of Social Classes", 1949.

[3] T. Newcomb, "Personality and Social Change", 1943.

[4] R. Brown, "Social Psychology", Ch. 10, p. 534, 1965.

highest correlation coefficients (Eysenck refers to them as factor saturations). The Highest correlation coefficients are those represented by the largest value regardless of its positive or negative sign.[1]

3. The Inventory in the Present Study

The items in the questionnaire are taken with some changes, which will be described in due course, from among the forty in the Eysenck Inventory. This inventory was chosen for the following reasons:

1. Its items cover all the sub-attitudes of liberalism in our sample.
2. It has been subjected to a factor analyis that determined that all the items were measuring the same underlying factor. (Factor analysis is essentially a correlational method yielding clusters of intercorrelated items).
3. It provides for the Likert method of scoring which is easy to handle.
4. It clearly distinguished British Socialists and Communists on the one hand from British Conservatives and Fascists on the other hand as a test of validity.
5. It is relatively free from cultural effects.

[1]H. Eysenck, op.cit., p.129, column 5.

6. It was used in another study on the social attitudes of the American judiciary, therefore provides a comparison between our sample magistrates and American judges.[1]

In order to have a less bulky questionnaire and thereby a higher rate of response (magistrates were also to answer many other questions), six items were chosen[2] which had the highest correlation with the factor of liberalism-conservatism. Some changes were made in the phraseology of the items in order to bring them up to date. They are as follows:

a) Eysenck's item "laws against abortion should be abolished" changed to "abortion, except when medically indicated, should not be legal".

b) Eysenck's item "the death penalty is barbaric, and should be abolished" changed to "death penalty should not be restored".

c) Eysenck's item "divorce laws should be altered to make divorce easier" changed to "it is right and proper that the law made divorce easier".

The Likert method of scoring is employed throughout the analysis.[3] It involves responding to attitudinal statements by indicating whether the respondent disagrees strongly, disagrees mildly,

[1] S. Nagel, "Off-the-Bench Judicial Attitudes", in Judicial Decision-Making, Ed. by Glendon Schubert, 1963.

[2] Table 34

[3] B.F. Green, "Attitude Measurement" in Handbook of Social Psychology, 1954, pp. 351-353.

SCORING OF QUESTIONNAIRE RESPONSES FOR EACH QUESTIONNAIRE ITEM

TABLE 34

Items		RESPONSES				
		Strong Disagreement	Mild Disagreement	No idea or Neutral	Mild Agreement	Strong Agreement
1. There should be more controversial and political discussion over radio or T.V.	(L)	1	2	3	4	5
2. Abortion, except when medically indicated, should not be legal.	(C)	5	4	3	2	1
3. Our treatment of adult offenders is too harsh.	(L)	1	2	3	4	5
4. It is right that the law made divorce easier.	(L)	1	2	3	4	5
5. Death Penalty should not be restored.	(L)	1	2	3	4	5
6. Religious education in schools should be compulsory.	(C)	5	4	3	2	1

Scoring

Conservatism 6 - - - - - - - - 18 - - - - - - - - 30 Liberalism

LIBERAL = Score more than 18

CONSERVATIVE = Score at or below 18

neither disagrees or agrees, mildly agrees, or strongly agrees. The scoring is designed in such a way that the more liberal a response to an item is, the higher the response is scored; and the less liberal a response to an item is, the lower the response is scored. Items worded in a liberal direction (e.g. item 1) are scored in an ascending direction (e.g. 1, 2, 3, 4, 5) for ascending responses (i.e. − −, −, 0, +, ++); whereas items worded in a conservative direction (e.g. item 2) are scored in a descending direction (e.g. 5, 4, 3, 2, 1) for ascending responses.[1] A "conservative" by definition is a person who scored at or below 18 and a "liberal" by definition is one who scored more than 18. According to this method of scoring, a liberal by definition expresses agreement with items 1, 3, 4, 5 and disagreement with items 2 and 6; a conservative would be expected to respond in the opposite way.

4. The Responses of the Stoke-on-Trent and Leek Magistrates

Tables 35 and 36 show the distribution of the magistrates' answers for each item. Liberal or Conservative after each item indicates whether the item is worded in a liberal or a conservative direction. The average response to each item was calculated by:

[1]Table 35

(1) assigning a score from 1 through 5 to each of the five possible responses

(2) multiplying each score by the frequency of its occurrence

(3) summing the products from step 2

(4) dividing the sum from step 3 by 24 (in the case of the Leek sample 6).

The findings in the case of Stoke-on-Trent and Leek juvenile courts demonstrate that magistrates on either benches are conservative on items 3 (treatment of adult offenders is too harsh) and 6 (Religious education in schools should be compulsory). While the Stoke-on-Trent magistrates are neutral in the rest of the items, Leek magistrates are liberal on items 2 "Abortion should not be legal", they want it to be legalized, 4 "It is right that divorce be made easier", and 5 "Death Penalty should not be restored". Therefore the conclusion is: Leek magistrates are slightly liberal (their overall score is 18.81), Stoke-on-Trent magistrates are slightly conservative (their overall score is 17.18).[1]

5. Comparison of 24 Stoke-on-Trent Magistrates with 250 Tories and 118 American Judges

To get an idea how liberal or how conservative are the Stoke-on-

[1]See Tables 35, 36 and 37.

DISTRIBUTION OF 24 STOKE-ON-TRENT MAGISTRATES' RESPONSES TO EACH ITEM

TABLE 35

24 Magistrates indicating:

	Strong Disagreement No.	Mild Disagreement No.	Neutral or No idea No.	Mild Agreement No.	Strong Agreement No.	Average Response Score	Conclusion
ITEM 1 (Liberal)	4 16.6%	4 16.6%	0 0	11 45.8%	5 20.8%	3.37	Neutral
ITEM 2 (Conservative)	5 20.8%	8 33.3%	0 0	6 25%	5 20.8%	3.08	Neutral
ITEM 3 (Liberal)	8 33.3%	12 50%	0 0	4 16.6%	0 0	2.00	Conservative
ITEM 4 (Liberal)	4 16.6%	3 12.5%	1 4%	11 45.8%	5 20.8%	3.41	Neutral
ITEM 5 (Liberal)	7 29.1%	6 25%	1 4%	2 8.3%	8 33.3%	2.91	Neutral
ITEM 6 (Conservative)	4 16.6%	4 16.6%	0 0	6 25%	10 41.5%	2.41	Conservative

24 Stoke-on-Trent Magistrates' Average 17.18 Conservative

DISTRIBUTION OF 6 LEEK MAGISTRATES' RESPONSES TO EACH ITEM

TABLE 36

6 Magistrates indicating:

	Strong Disagreement	Mild Disagreement	Neutral or Mild No Idea	Mild Agreement	Strong Agreement	Average Response	Conclusion
	No.	No.	No.	No.	No.	Score	
ITEM 1 (Liberal)	1 16.6%	2 33.3%	0 0	1 16.6%	2 33.3%	3.16	Neutral
ITEM 2 (Conservative)	1 16.6%	3 50%	0 0	2 33.3%	0 0	3.50	Liberal
ITEM 3 (Liberal)	1 16.6%	4 66.6%	0 0	1 16.6%	0 0	2.16	Conservative
ITEM 4 (Liberal)	0 0	0 0	1 16.6%	3 50%	2 33.3%	4.16	Liberal
ITEM 5 (Liberal)	1 16.6%	0 0	0 0	2 33.3%	3 50%	4	Liberal
ITEM 6 (Conservative)	0 0	1 16.6%	0 0	2 33.3%	3 50%	1.83	Conservative

6 Leek Magistrates' Average 18.81 Liberal

COMPARISON OF 24 STOKE-ON-TRENT MAGISTRATES WITH 6 LEEK MAGISTRATES

TABLE 37

Questionnaire Items		Percentages of 24 Stoke-on-Trent Magistrates indicating AGREEMENT	Percentages of 6 Leek Magistrates indicating AGREEMENT	Difference	Stoke-on-Trent Magistrates More Conservative
1. There should be far more controversial and political discussion over radio or T.V.	(L)	66.6	39.9	26.7	No
2. Abortion, except when medically indicated, should not be legal.	(C)	45.8	33.3	12.5	Yes
3. Our treatment of adult offenders is too harsh.	(L)	16.6	16.6	0	-
4. It is right and proper that the law made divorce easier.	(L)	66.6	83.3	16.7	Yes
5. Death Penalty should not be restored.	(L)	41.6	83.3	41.7	Yes
6. Religious education in schools should be compulsory.	(C)	66.6	83.3	16.7	No

Trent[1] magistrates, it is helpful to compare their liberalism -conservatism with those of some analogous groups. Among the varied groups to whom Eysenck administered his questionnaire, the group of British Conservative party members may be deemed the closest group of the magistrates. Comparison will also be made between the magistrates and the 118 American state and federal supreme judges whom similar questionnaires were administered.[2]

A) Comparison of 24 Stoke-on-Trent Magistrates with the Tories

The questionnaire results of 250 middle-class members of the Conservative Party are compared with those of the Stoke-on-Trent magistrates. An analysis of the respective responses and the nature of the questionnaire items to which they pertain reveals that Stoke-on-Trent magistrates are more liberal than the Tories on items 4 (it is right that the law made divorce easier) and 5 ("Death penalty should not be restored", in the case of Tories the wording is "Death penalty should be abolished" as was the situation in 1954).[3] Tories scored more liberal than Stoke-on-Trent magistrates on item 3 ("Treatment of adult offenders is too harsh"). This result may be partly attributed to the

[1]Only Stoke-on-Trent magistrates are compared since they are more conservative than Leek magistrates and larger in numbers.

[2]S. Nagel, op. cit., Table 2, p. 33.

[3]Table 38.

COMPARISON OF 24 STOKE-ON-TRENT MAGISTRATES WITH 250 BRITISH CONSERVATIVES

TABLE 38

Questionnaire Items	Voted in L direction Percentages of 24 Stoke-on-Trent Magistrates	Voted in L direction Percentages of 250 Tories indicating AGREEMENT	Difference in percentages	Stoke-on-Trent magistrates more Conservative
1. There should be far more controversial and political discussion over radio or T.V. (Liberal)	66.6	67	.4	-
3. Our treatment of adult offenders is too harsh. (Liberal)	16.6	39	22.4	Yes
4. It is right and proper that the law made divorce easier. (Liberal)	66.6	33	33.6	No
5. Death Penalty should not be restored. (Liberal)	41.6	30	11.6	No
6. Religious education in schools should be compulsory. (Conservative)	66.6	66	.6	-

Note: Item 2 is excluded from the Table for the sake of accurate comparisons among magistrates, British Tories and American judges, since S. Nagel did not include this item in his inventory.

changes that have taken place in the penal system since 1954, the year Eysenck administered his questionnaire. Time-bound feature of the Inventory demonstrates itself in the context of this item. There is no difference between the two groups on items 1 (more discussion on radio) and 6 (Religious education in schools should be compulsory). Therefore the conclusion is: Stoke-on-Trent magistrates are more liberal than 250 Tories.

B) Comparison of 24 Stoke-on-Trent Magistrates with the American Judges

The comparison of the Stoke-on-Trent magistrates with the American Judges yields a result that the latter are slightly (3.4 per cent) more liberal on item 3 (Treatment of adult offenders is too harsh) and on item 6 (Religious education should be compulsory).[1] The reason why the Stoke-on-Trent magistrates are more conservative than American judges on the item regarding the penal system in both countries, may be attributed to the fact that British penal system is more humane than its American counterpart. Such a result demonstrates the culture-bound limitation of the Inventory when comparisons are made. Stoke-on-Trent magistrates, on the other hand, are more liberal than American judges on item 1 (more discussion on radio or T.V.), on item 2 (it is right that the law made divorce easier), and

[1]Table 39.

COMPARISON OF 24 STOKE-ON-TRENT MAGISTRATES WITH 118 AMERICAN JUDGES

TABLE 39

Questionnaire Items		Voted in L direction Percentages of 24 Stoke-on-Trent magistrates	Voted in L direction Percentages of 118 American judges	Difference percentages	Stoke-on-Trent magistrates more Conservative
1. There should be far more controversial and political discussion over the radio or T.V.	(L)	66.6	64	2.6	No
3. Our treatment of adult offenders is too harsh.	(L)	16.6	20	3.4	Yes
4. It is right and proper that the law made divorce easier.[1]	(L)	66.6	14	52.6	No
5. Death Penalty should not be restored.[2]	(L)	41.6	34	7.6	No
6. Religious education in schools should be compulsory.[3]	C	66.6	31	25.6	Yes

[1]Wording in the case of American Judges and Tories is "Divorce laws should be altered to make divorce easier".

[2]Wording in the case of American Judges and Tories is "The death penalty is barbaric, and should be abolished".

[3]Wording in the case of American Judges and Tories is "It is right and proper that non-sectarian religious education in schools should be compulsory".

[4]Item 2 is excluded from the Table, since Nagel did not include it in his inventory.

on item 3 (Death penalty should not be restored). The overall result reveals that Stoke-on-Trent magistrates are more liberal than American judges.

III - RELATION OF SOCIAL ATTITUDES OF MAGISTRATES TO THEIR PERSONAL AND SOCIAL BACKGROUND CHARACTERISTICS

Having established the social attitudinal characteristics of magistrates the next question to be asked is; what personal and social background characteristics are most influential in shaping their liberalism or conservatism, as used in the present study?

1. The Effect of Age

It is generally said that older people tend to be more conservative than younger ones. An investigation on 118 American judges revealed that older judges tend to be more conservative than the younger ones.[1] According to a sample of New York City adults, older persons tend to be more conservative.[2]

However, data reveals that there is no relationship between age and social attitudes among Stoke-on-Trent and Leek magistrates.

[1] S. Nagel, op. cit.

[2] A.C. Tucker, "Some Correlates of Certain Attitudes of the Unemployed", Arch. of Psychology, No. 245, quoted from W.A. Kerr, Correlates of Politico-Economic Liberalism-Conservatism, The Journal of Social Psychology, 1944, Vol. 20, pp. 61-77.

Five out of seven (69.3 per cent) of Stoke-on-Trent magistrates whose scores are liberal are in the 50 exc. - 65 age group,[1] whereas half the Leek magistrates are in the younger age range.[1a] It is a pity that the sample size is of such a necessarily small size.

2. The Effect of Sex

In a study of 3,758 students in Mid-Western, Eastern and Southern Colleges, Nelson found men to be the most liberal.[2] However, in a sample of Purdue University students, Whister and Remners failed to find a significant difference between men and women in average liberalism.[3]

In our sample the data yields a result which is contrary to our postulate, i.e. women tend to be more conservative in their attitudes towards social change than men. Although the conclusion is not statistically significant, four out of seven of all liberal Stoke-on-Trent magistrates are females, whereas half of the Leek magistrates are liberal.[4] The conclusion is, therefore, although there is an indication that males are more conservative, this trend is not statistically significant.

[1] Table 40.

[1a] Table 41.

[2] D. Nelson, "Radicalism-Conservatism in student attitudes", Psycholog. Monog. 1938, 50, pp. 1-36, cited by W.A. Kerr, op.cit.

[3] L.D. Whister and H.H. Remmers, "Liberalism, optimism, and group morale- a study of student attitudes" in Journal of Soc. Psych. Vol.25, cited by W.A. Kerr, op. cit.

[4] Tables 42 and 43.

RELATION OF LIBERALISM TO AGE GROUPS

TABLE 40

Stoke-on-Trent Magistrates

Age Groups	Liberal No.	%	Conservative No.	%
35-40	1	14.2	0	0
41-45	0	0	3	17.6
46-50	1	14.2	3	17.6
51-55	4	57.1	7	41.1
56-60	1	14.2	3	17.6
61-65	0	0	1	5.8
Total	7	100	17	100

Fisher Exact Probability Test

Non-Significant (P = .05)

TABLE 41

Leek Magistrates

Age Groups	Liberal No.	%	Conservative No.	%
35-40	0		0	
41-45	1		0	
46-50	1		0	
51-55	2		1	
56-60	0		1	
61-65	0		0	
Total	4		2	

RELATION OF LIBERALISM TO SEX

TABLE 42

Stoke-on-Trent Magistrates

Sex	Liberalism No.	%	Conservatism No.	%
Male	3	42.8	10	58.8
Female	4	57.1	7	41.1
Total	7	100	17	100

Fisher Exact Probability Test

Non-Significant (P = .05)

TABLE 43

Leek Magistrates

Sex	Liberalism No.	%	Conservatism No.	%
Male	2		1	
Female	2		1	
Total	4		2	

3. The Effect of Education

In analysing the relationship between educational background and liberal attitudes, the postulate is: those who received higher education are more liberal than others. However, analysis revealed that there is no statistically significantly relationship between receiving a higher education and liberalism in attitudes. In Stoke-on-Trent two liberal magistrates received elementary education, one received grammar or (possibly public school) education, whereas four liberals received some kind of higher education.[1] In Leek three out of four liberal magistrates received higher education.[2] To sum up there is an indication that those magistrates who received higher education are more liberal than those who did not, but the relationship is non-significant.

4. The Effect of Social Class

Investigation into the relationship of social class to liberalism in social attitudes yields a statistically significant result. Data demonstrates that all except one of the "liberal" Stoke-on-Trent magistrates are in the higher professional and manual worker class, whereas only one third of all conservative

[1] Table 44

[2] Table 45

RELATION OF LIBERALISM TO THE AGE OF FINISHING FULL-TIME EDUCATION

TABLE 44

Stoke-on-Trent Magistrates

Age of finishing full-time education	Liberal No.	%	Conservative No.	%	
14	1	14.2	3	17.6	
15	1	14.2	0	0	
16	0	0	4	23.5	
17	1	14.2	1	5.8	
18	0	0	4	23.5	
21	1	14.2	3	17.6	
22	2	28.5	1	5.8	
24	1	14.2	0	0	
25	0	0	1	5.8	
Total	7	100	17	100	= 24

TABLE 45

Leek Magistrates

Age of finishing full-time education	Liberal No.	%	Conservative No.	%	
14					
15	1		1		
16					
17					
18					
21	2		1		
22					
24	1				
25					
Total	4		4		= 6

Fisher Exact Probability Test

Non-significant (P = .05)

magistrates are in the same class.[1] The rest of the conservative magistrates are either employers, managers or administrators. In Leek the numbers are evenly distributed but it is impossible to make inferences from such a small sample.[2] Conclusion is (in the case of the Stoke-on-Trent sample) the relationship between the social class and liberalism in social attitudes is statistically significant. Those who belong to higher professional and manual worker groups are more liberal than others.

[1] Table 46.

[2] Table 47.

RELATION OF LIBERALISM TO SOCIAL CLASS

TABLE 46

STOKE-ON-TRENT

Social Class	Liberalism No.	%	Conservatism No.	%	
1. Employers and Proprietors	1	14.2	5	29.4	
2. Managers and Administrators	0	0	6	35.2	
3. Higher Professionals	5	71.4	6	35.2	
4. All Manual Workers	1	14.2	0	0	
Total	7	100	17	100	= 24

Fisher Exact Probability Test

Significant (P = .05)

TABLE 47

LEEK

Social Class	Liberalism No.	Conservatism No.	
1. Employers and Proprietors	2	1	
2. Managers and Administrators	0	0	
3. Higher Professionals	2	1	
4. All Manual Workers	0	0	
Total	4	2	= 6

CHAPTER 11

THE EFFECT OF SOCIAL ATTITUDES ON SENTENCING

1. General Considerations and the Null Hypothesis

Social attitudes of the Stoke-on-Trent and Leek magistrates were analysed in the previous chapter. This chapter will offer some findings on the effect of their social attitudes on their sentencing decisions. However, this analysis will be concerned only with the Stoke-on-Trent magistrates since the very small numbers of magistrates and offenders in Leek made the similar analysis impossible.

It is important to realize while investigating the relationship between social attitudes and judicial decision-making that the sentences are not the product of one mind. They are imposed by lay magistrates who sit in groups of two or more to deal with all offences with the result that they must agree upon their sentence. Therefore during the discussion of a sentence among the magistrates, it is very likely that the would-be effect of their social attitudinal values on their sentencing decisions are lessened to a considerable extent. Second important point is that the magistrates discuss the sentencing policy in general with their colleagues. This should have some effect on their sentencing decisions too. However, the latter factor is incommensurable within the limits of the present study.

Therefore when the null hypothesis was formulated, two possibilities were taken into account:

1) Social attitudes of magistrates have a bearing on the decisions they reach. In other words, liberal magistrates tend to impose less severe sentences than conservative magistrates in similar cases where there is no need to take into account the welfare needs of the offenders, namely in good cases.

2) However, as the lay magistrates always sit in groups while imposing sentences, and as they must agree upon the sentence, the effect of their social values on the sentences they impose is modified to a considerable extent.

Therefore our null hypothesis in this chapter is: liberal magistrates tend to impose less severe sentences than their conservative colleagues; however the differences between them will be slight.

2. Methodology

In order to determine whether the magistrates' social attitudes have a bearing on the sentences they reach a technique, herein after known as the Comparison of Means Test is employed.

First, all sample cases (346) were classified in various groups (37) according to their similarity in:

1) the type of offence e.g. breaking and entering, serious stealing and minor stealing

2) the age group which the offender belongs to, e.g. 10-13 (inc) and 14-16 (inc)

3) the sex of the offender

4) the number of offences taken into consideration,

and finally

5) the nature of the previous criminal record, e.g. no previous convictions (first offender), put on probation once before but the present offence does not constitute the breach of that order, or put on probation once before and the present offence constitutes the breach of that order.

Secondly, each group which consists of similar cases determined according to the above mentioned criteria, was further divided into t wo groups according to whether the offenders who committed them had good personal backgrounds or they had some sort of problem, i.e. welfare cases.[1] The welfare cases group was excluded from the ensuing analysis since the welfare needs of the offenders vary largely from one offender to another. So the analysis was made in the case of offenders who have good background and personal circumstances.

[1]For scoring the good and welfare personal background see Chapter 7.

Thirdly, the magistrates who imposed sentences in alike cases were divided into two groups as liberals (seven) and conservatives (seventeen). Those magistrates who refused to be interviewed or did not answer the questionnaire in full (altogether five) had to be excluded since it was impossible to discover their social attitudinal characteristics.

Next, each magistrates' sentence was coded[1] according to increasing severity, and thus, the average of the sentences each magistrate had imposed in a given group of cases was obtained.

Finally, all the averages of each liberal magistrates' sentences were added together and the sum total was divided into the number of liberal magistrates. The same calculation was made in the case of conservatives too.

The final figures demonstrate, as will be explained in the following paragraphs, that liberal magistrates total average is slightly less than their conservative colleagues in all group of cases. This means that liberal magistrates imposed less severe sentences than conservative magistrates in all similar group of cases. The conclusion is, therefore, that

[1]The coding system adopted was as follows:
absolute discharge 1; conditional discharge 2; fine 3; attendance centre 4; probation order 5; fit person 6; detention centre 7; approved school 8.

the social attitudes of magistrates have a bearing on their sentencing decisions, though only slightly so.

It should be noted that because of the very small number of cases in most groups, and the five magistrates who did not answer the inventory, only five groups of cases could be analysed out of the total thirty-seven. However, all the five group of cases include first offenders with no offences taken into consideration. This enables us to compare the seriousness which magistrates approach three sample offences, i.e. breaking and entering, serious stealing and minor stealing.

3. The Analysis

It should also be noted that not all the seven liberal and seventeen conservative magistrates imposed sentences in each group therefore their numbers vary accordingly. Secondly, it is also important to realize that if the average score is, say 3, for a particular group of magistrates, that does not necessarily correspond to "fine" (code number 3). It may be the average of 2 (conditional discharge) and 4 (attendance centre). This is an inevitable difficulty with a test as general as the Comparison of Means Test.

The first group of cases are all breaking and entering offences committed by boys in the age group 14-16 (inc), namely young

persons, where there are no offences to be taken into consideration and no previous criminal record. Liberals' average score is 3.27, conservatives' 3.33.[1]

The second group of cases are again breaking and entering offences but on this occasion committed by boys who are in the 10-13 (inc) age group, namely children. There are not offences to be taken into consideration and no previous criminal record. The Liberals' average score is 2.68, conservatives' 2.81.[2]

The third group consists of serious stealing offences committed by boys aged between 14 and 16. There are not offences to be taken into consideration and no previous criminal record. Again the liberals impose slightly less severe sentences than conservatives. Their average is 2.55, whereas conservatives is 2.61.[3]

The fourth group consist of serious stealing offences committed by boys aged between 10 and 13 (inc). There are no offences to be taken into consideration and no previous criminal record. Liberals average is 2 whereas conservatives average is 3.08.[4]

[1]Table 48

[2]Table 49

[3]Table 50

[4]Table 51

TABLE 48

Group 1

Liberal Magistrates

Magistrates Code No.	Sentences' Code No.	Average
1	2,2,5,2,2	2.60
3	2,2,2	2
4	3,5	4
7	5,4	4.50
	Av. = 3.27	13.10

Conservative Magistrates

15	2,5	3.50
16	2	2
9	2,4,2	2.66
14	5,5	5
21	5,5,2,2	3.50
20	5,5,4,2,3,2	3.50
10	4	4
17	2,5	3.50
11	2	2
23	2,5	3.50
12	2,5	3.50
	Av. = 3.33	36.66

Average of <u>all</u> magistrates in Group 1 : 3.30

Note: Magistrates names are coded for the sake of anonymity.

TABLE 49

Group 2

Liberal Magistrates

Magistrates Code No.	Sentences' Code No.	Average
4	2,5,2,2	2.75
7	2,5	3.50
1	2,2,2,4	2.50
3	2,2	2
	Av. = 2.68	10.75

Conservative Magistrates

16	2	2
9	2,2,2,2,2	2
19	2,2	2
21	2,5,5	4
22	2,5	3.50
11	2,4	3
10	2,2,2,2	2
15	4	4
	Ave. = 2.81	22.50

Average of all magistrates in Group 2 : 2.74

TABLE 50

Group 3

Liberal Magistrates

Magistrates' Code No.	Sentences Code No.	Average
4	5,2,2,2,2,2,2,2,3	2.44
7	5,2,2	3
3	2,2	2
1	4,2,2	2.66
5	4,2,2	2.66
	Av. = 2.55	12.76

Conservative Magistrates

20	2,2,2,2,2,2,2,3,5	2.44
23	2,2,2,3	2.22
19	2,3,2,2,2,2,2,2	2.12
18	2	2
21	2	2
11	2,2,2	2
22	2,2	2
13	2,2	2
16	2	2
10	5	5
14	5	5
	Av. = 2.61	28.78

Average of all magistrates in Group 3 : 2.58

TABLE 51

Group 4

Liberal magistrates

Magistrates' Code No.	Sentences Code No.	Average
1	2,2	2
3	2,2	2
7	2	2
5	2,2	2
	Av. = 2	8

Conservative Magistrates

19	2,2,2,2,2,5	2.50
18	2	2
17	5,5	5
11	5,5,2,4	4
20	2,2,2	2
22	4,2	3
13	2,2,5,2	2.75
16	2,2	2
21	2,4	3
10	4,4	4
9	4,4	4
8	2,2,5,2	2.75
	Av. = 3.08	37

Average of all magistrates in Group 4 : 2.54

TABLE 52

Group 5

Liberal Magistrates

Magistrates' Code No.	Sentences' Code No.	Average
4	2,2,2,2,2,2,	2
1	2,2	2
	Av. = 2	4

Conservative Magistrates

8	3	3
21	2,2,2,2,2,2	2
18	2,2,2,2,2,2	2
20	2	2
23	2,1,1,3	1.75
19	3,3,3,2,2,2,2,2,2,2,	2.30
9	2,2,2,2	2
13	1,1,3	1.66
11	2,2,2,2,2,2,2	2
14	4	4
15	4	4
22	2,2	2
10	2,2	2
	Av. = 2.36	30.71

Average of all magistrates in Group 5 : 2.18

The fifth group consists of minor stealing offences committed by 14 to 16 (inc) year old boys who have no offences to be taken into consideration and who are all first offenders. Liberal magistrates' average is 2, whereas conservatives' average is 2.36.[1]

4. Summary and conclusion

To sum up the results of this part of the analysis. In all five groups of cases liberal magistrates average scores are slightly lower than their conservative colleagues. In other words, conservatives impose slightly more severe sentences than liberal magistrates. The conclusion is, therefore, that social attitudes of magistrates have a slight bearing on the decisions they reach. As a consequence of sitting together on the bench and the compulsion of agreement in passing a sentence, and probably due to the discussions on sentencing policy among themselves, the differences between liberal and conservative magistrates in imposing sentences with varying degree of severity is very small.

[1] Table 52

TABLE 53

AVERAGE OF SENTENCES IMPOSED IN THREE SAMPLE OFFENCES

breaking and entering	3.02
serious stealing	2.56
minor stealing	2.18

The above averages reveal that the magistrates regard the breaking and entering offences as being the most serious offence, this is followed by serious stealing, and finally by minor stealing as the least serious. Accordingly, they imposed sentences with a different degree of severity. Therefore, we can conclude that the ranking of offences according to increasing seriousness in the present study is appropriate.

CHAPTER 12

THE WELFARE FACTOR AND THE RELATION OF MAGISTRATES' SENTENCING ATTITUDES TO THEIR ACTUAL SENTENCES.

1. General Considerations and the Null Hypotheses

In the next chapter various factors which may influence the sentencing in the Stoke-on-Trent and Leek juvenile courts will be investigated in detail. This chapter analyses the "welfare factor" in juvenile court sentencing in a limited way, based on some selected alike cases. This investigation will also reveal the relationship between the magistrates' sentencing attitudes and the actual sentencing decisions they made, namely their sentencing behaviour. However, the investigation will be made only on the Stoke-on-Trent magistrates, since the very small numbers of magistrates and offenders in Leek made a similar analysis impossible.

According to the first null hypothesis unless the offence is trivial the magistrates tend to take into account the quality of the personal background of the offenders whom they deal with. However, in a trivial offence (in our sample minor stealing) because of the legal character of the English juvenile court, they base their decisions on the nature of the offence whatever the personal background of the offender. In such cases, even if there is a need for welfare consideration, they tend not to make any drastic sentence.

According to the second hypothesis magistrates' sentencing attitudes[1]

[1]Magistrates were asked to attach a particular sentence to the cards given to them. This denotes their sentencing attitudes (in the following Tables it is called Magistrates' Test). In doing this they were told that they were dealing with "good" cases only. Thus the welfare factor was isolated by the cards.

are similar to the sentences they actually impose in cases where there is no need to take into account any welfare consideration, namely good cases.[1] On the other hand it is postulated that their sentencing attitudes in good cases would be largely different from the sentences they actually impose in welfare cases, because they should take into account the welfare needs of the offender.

2. Methodology

As shown in the previous chapter, all sample cases (346) were classified in 37 groups according to their similarity in the type of offence, the age group, the sex of the offender, the number of offences to be taken into consideration and finally, the nature of the previous criminal record. Then each group which consists of alike cases is further divided into two sub-groups according to whether the offenders have good personal backgrounds or they have some sort of problem, i.e. welfare cases.

Next, in each case magistrates' average of the sentences they attached to the cards is calculated. Then the differences between the actual sentences they imposed in each case and the average of the sentences they attached to the cards in similar cases is found out, and the sum total of such differences are then divided by the number of cases in each sub-group. If the differences are positive this means that the magistrates actually imposed more severe sentences than they said they would have imposed in similar cases. If

[1] See Chapter 7 for the scoring of good and welfare background.

the differences are negative this demonstrates that they actually imposed less severe sentences than they said they would have imposed in similar cases.

There are two-fold purposes of employing such a method of investigation. First, to find out whether the welfare cases were imposed more severe sentences than good cases. This would indicate that the magistrates took into account the welfare needs of the offender. Secondly, whether there is any difference between the degree of severity of sentences that were imposed in good cases and the sentences that were attached to the cards for similar cases.

It should be noted that as a result of the small numbers of magistrates and offenders in most groups the investigation can be carried put in only six out of thirty-seven groups of cases. All juveniles in the analysed six groups are first offenders (they have no previous criminal records) with no offences to be taken into consideration. Thus two factors in sentencing are isolated in the ensuing analysis, and this in turn makes the following investigation more accurate, because it is carried out in the case of first offenders only.

3. The Analysis

The first group (card 1)[1] consists of breaking and entering offences committed by boys in the 14 to 16 (inc) age group, with no offences to be taken into consideration and no previous criminal record.

[1]See Appendix II

In the good sub-group the average of the difference between the actual sentences imposed and the sentencing attitudes is negligible (+ .32).[1] This shows that magistrates imposed slightly more severe sentences in good cases than they said they would have imposed in similar circumstances. If this negligible difference is ignored, the average demonstrates that where there is no welfare consideration there is no difference between the actual sentences and the sentencing attitudes of the magistrates.

However, in welfare cases the average of the difference between the actual sentences imposed and the sentencing attitudes of the magistrates is large (+ 1.36).[2] The result demonstrates that magistrates took into account the welfare factor and imposed more severe sentences than the above sub-group. Accordingly it can be concluded that their sentencing attitudes differ from the sentences they actually imposed since they considered the welfare needs of the offenders.

The second group (card 2) consists of breaking and entering offences committed by boys in the age group 10-13 (inc), with no offences to be taken into consideration and no previous criminal record.

In the good cases sub-group the average of the difference between

[1] Table 54

[2] Table 55

TABLE 54

Group 1 Sub-group : Good cases

Offenders	Actual Sentances	Magistrates' Code Nos.	Magistrates' Test (1)	Magistrates' Test Average (2)	Difference (3)
1	2	1 15	2 2	2	0
2	2	1 16 9	2 2 2	2	0
3	5	20 14 21	5 3 2	3.33	+ 1.67
4	5	20 14 21	5 3 2	3.33	+ 1.67
5	4	20 9 10	5 2 2	3	+ 1
6	2	1 3	2 2	2	0
7	2	17 11	5 4	4.50	− 2.50
8	5	1 15 23	2 2 2	2	+ 3
9	2	21	2	2	0
10	2	23	2	2	0
11	2	20 3	5 2	3.50	− 1.50
12	2	12 21	2 2	2	0
13	3	20 4	5 4	4.50	− 1.50
14	2	20 9	5 2	3.50	− 1.50
15	5	4 7	4 2	3	+ 2
16	2	1 3	2 2	2	0
17	4	7	2	2	0
18	5	17 12	5 2	3.50	+ 1.50
Average of difference = + .32					+ 5.84

continued/

Continuation Table 54:

Note:

1. Code numbers for sentances are as follows:

absolute discharge (1)

conditional discharge (2)

fine (3)

attendance centre (4)

probation (5)

fit person (6)

detention centre (7)

approved school (8)

They are coded according to increasing severity.

2. "Difference" is calculated by comparing the Magistrates' Test Average with the Actual Sentences.

3. Single magistrate cases show that the others refused to be interviewed.

[1]Magistrates' Test shows the sentences attached to the cards by them. In other words it denotes their sentencing attitudes in alike cases.

[2]Magistrates' Test Average denotes the average of sentencing attitudes of magistrates.

[3]"Difference" denotes in good cases whether the magistrates were more severe (+) in their actual sentencing decisions or less severe (-) in comparison with their sentencing attitudes in similar cases; however in welfare cases (+) means that they took into account the welfare needs of the offenders and accordingly passed more drastic sentences.

TABLE 55

Group 1 Sub-group : Welfare cases.

Offenders	Actual Sentences	Magistrates' Code Nos.	Magistrates' Test	Magistrates' Test Average	Difference
1	5	20 9 10	5 2 2	3	+ 2
2	3	21	2	2	+ 1
3	5	24	5	5	0
4	4	19 4	2 4	3	+ 1
5	4	19 4	2 4	3	+ 1
6	5	1 15	2 2	2	+ 3
7	5	3	2	2	+ 3
8	4	1 5	2 2	2	+ 2
9	2	21	2	2	0
10	3	1 16 5	2 2 2	2	+ 1
11	5	20 14	5 3	4	+ 1
					+ 15

Average of difference = + 1.36

the actual sentences imposed and the sentencing attitudes is again negligible (+ .22).[1] This figure shows that the magistrates imposed slightly more severe sentences in good cases than they said they would have imposed in similar circumstances.

On the other hand in the welfare sub-group cases the average of the difference between the actual sentences imposed and the sentencing attitudes of the magistrates is large (+ 1.61).[2] The result demonstrates that magistrates took into account the welfare factor and imposed more severe sentences than the above sub-group. Accordingly it can be concluded that their sentencing attitudes differ from the sentences they actually imposed since they considered the welfare needs of the offenders.

The third groups (card 3) consists of serious stealing offences committed by boys between 14 and 16 years of age. Like other groups there are no offences to be taken into consideration and no previous criminal record of offenders.

In the good cases sub-group the average of the difference between the actual sentences imposed and the sentencing attitudes is

[1] Table 56

[2] Table 57

TABLE 56

Group 2 Sub-group : Good cases

Offenders	Actual Sentences	Magistrates' Code Nos.	Magistrates' Test	Magistrates' Test Average	Difference
1	2	4 7	4 2	3	− 1
2	5	4 7	4 2	3	+ 2
3	2	1 16 9	2 2 2	2	0
4	2	1 3	2 2	2	0
5	2	1 3	2 2	2	0
6	2	19 4	2 4	3	− 1
7	2	19 4	2 4	3	− 1
8	2	21	2	2	0
9	5	21	2	2	+ 3
10	5	21	2	2	+ 3
11	2	22 11	5 4	4.50	− 2.50
12	2	10 9	2 2	2	0
13	2	10 9	2 2	2	0
14	2	10 9	2 2	2	0
15	2	10 9	2 2	2	0
16	4	11 1 15	4 2 2	2.66	+ 1.34
17	5	22	5	5	0
					+ 3.84

Average of difference = + .22

TABLE 57

Group 2 Sub-group : Welfare cases

Offenders	Actual Sentences	Magistrates' Code Nos.	Magistrates' Test	Magistrates' Test Average	Difference
1	2	4 20 9	4 2 2	2.66	− .66
2	2	4 7	4 2	3	− 1
3	5	1 15	2 2	2	+ 3
4	5	19 9 2	2 2 4	2.66	+ 2.34
5	5	1 3 16	2 2 2	2	+ 3
6	5	10 9	2 2	2	+ 3
					+ 9.68

Average of difference = + 1.61

negligible (+ .18)[1]. That is to say, the magistrates imposed slightly more severe sentences in good cases than they said they would have imposed in similar circumstances.

However in the welfare sub-group the average of the difference between the actual sentences imposed and the sentencing attitudes is very large (+ 2.20)[2]. This demonstrates that magistrates took into account the welfare needs of the offenders, and so, imposed more severe sentences than they did in good cases. For the very same reason the actual sentences they imposed differ remarkably from their sentencing attitudes.

The fourth group (card 4) consists of serious stealing offences committed by boys between 10 and 13 years of age. Like all the other groups there are no offences to be taken into consideration and no previous criminal record of offenders.

In the good cases the average of the difference between the actual sentences imposed and the sentencing attitudes, unlike other good sub-groups, is quite large for good cases (+ .83)[3]. This means that magistrates imposed more severe sentences in the actual cases than they said they would have imposed. Virtually they

[1]Table 58

[2]Table 59

[3]Table 60

TABLE 58

Group 3 Sub-group : Good cases

Offenders	Actual Sentences	Magistrates' Code Nos.	Magistrates' Test	Magistrates' Test Average	Difference
1	5	4 7	2 2	2	+ 3
2	2	20 4 23	3 2 2	2.33	− .33
3	2	20 4 23	3 2 2	2.33	− .33
4	2	19 18	2 2	2	0
5	2	20 23 4	3 2 2	2.33	− .33
6	3	19	2	2	+ 1
7	2	19	2	2	0
8	2	19 7 4	2 2 2	2	0
9	2	19 4	2 2	2	0
10	2	19 4	2 2	2	0
11	2	20 3	3 3	3	− 1
12	2	20 3	3 3	3	− 1
13	4	1 5	2 2	2	+ 2
14	2	21 7	2 2	2	0
15	2	20 11	3 2	2.50	− .50
16	2	1 5 22	2 2 3	2.33	− .33
17	2	22 11	3 2	2.50	− .50
18	3	20 4 23	3 2 2	2.33	+ .67

continued/

continuation Table 58

Offenders	Actual Sentences	Magistrates' Code Nos.	Magistrates' Test	Magistrates Test Average	Difference
19	2	19 13	2 2	2	0
20	2	19 13	2 2	2	0
21	2	1 16 5	2 2 2	2	0
22	2	20 4	3 2	2.50	− .50
23	2	11	2	2	0
24	5	20 14 10	3 2 2	2.33	+ 2.67
					+ 4.02

Average of difference = + .18

TABLE 59

Group 3 Sub-group : Welfare cases

Offenders	Actual Sentences	Magistrates' Code Nos.	Magistrates' Test	Magistrates' Test Average	Difference
1	5	4 7	2 2	2	+ 3
2	2	20 3	3 3	3	− 1
3	2	1 5	2 2	2	0
4	8	8	4	4	+ 4
5	8	19 22 11	2 3 2	2.33	+ 5.67
6	5	22 11	3 2	2.50	+ 2.50
7	5	22 11 7	3 2 2	2.33	+ 2.67
8	5	23	2	2	+ 3
9	2	10 9	2 2	2	0
					+ 19.84

Average of difference = + 2.20

TABLE 60

Group 4 Sub-group : Good cases

Offenders	Actual Sentences	Magistrates' Code Nos.	Magistrates' Test	Magistrates' Test Average	Difference
1	2	19 18	2 2	2	0
2	5	17 11	2 2	2	+ 3
3	5	17 11	2 2	2	+ 3
4	2	19	2	2	0
5	2	20 3	2 2	2	0
6	2	20 3	2 2	2	0
7	2	20 11 7	2 2 2	2	0
8	4	22 11	2 2	2	+ 2
9	2	22	2	2	0
10	2	19 13 8	2 2 2	2	0
11	2	19 13 8	2 2 2	2	0
12	5	19 13 8	2 2 2	2	+ 3
13	2	19 13 8	2 2 2	2	0
14	2	1 5 16	2 2 2	2	0
15	2	1 5 16	2 2 2	2	0
16	2	21	2	2	0
17	4	10 9 21	2 2 2	2	+ 2
18	4	10 9	2 2	2	+ 2
Average of difference = + .83					+ 15

were severe in good cases.

In the welfare cases they imposed even more severe sentences than they did in good cases. The average of the difference between the actual sentences imposed and the sentencing attitudes is + 2.15.[1] However in welfare cases such difference is expected since this indicates that the magistrates took into account the welfare needs of the offenders. Naturally the sentences they imposed differ from their sentencing attitudes.

The fifth group (card 5) consists of serious stealing offences committed by girl offenders between 14 and 16 (inc), who are first offenders and with no other offences to be taken into consideration.

In good cases the average of the difference between the actual sentences imposed and the sentencing attitudes is negligible (+ .18).[2] This figure indicates that magistrates imposed slightly more severe sentences than they said they would have imposed in similar circumstances.

However in welfare cases the average of the difference between

[1] Table 61

[2] Table 62

TABLE 61

Group 4 Sub-group : Welfare cases

Offenders	Actual Sentences	Magistrates' Code Nos.	Magistrates' Test	Magistrates' Test Average	Difference
1	5	20 9	2 2	2	+ 3
2	5	17 11	2 2	2	+ 3
3	5	20 17 14	2 2 2	2	+ 3
4	5	1 15	2 2	2	+ 3
5	5	1 15	2 2	2	+ 3
6	2	1 15	2 2	2	0
7	2	20 3	2 2	2	0
8	2	20 3	2 2	2	0
9	5	21	2	2	+ 3
10	5	20 23 4	2 2 3	2.33	+ 2.67
11	5	1 5 22	2 2 2	2	+ 3
					+ 23.67

Average of difference = + 2.15

TABLE 62

Group 5 Sub-group : Good cases

Offenders	Actual Sentences	Magistrates' Code Nos.	Magistrates' Test	Magistrates Test Average	Differenc
1	2	19 11 8	2 2 2	2	0
2	2	24	2	2	0
3	3	19 3	2 2	2	+ 1
4	2	21	2	2	0
5	2	21	2	2	0
6	2	20 3	2 2	2	0
7	2	19 10 4	2 2 2	2.33	− .33
8	2	19 10 4	2 2 3	2.33	− .33
9	5	14 15	3 2	2.50	+ 2.50
10	2	20 11	2 2	2	0
11	2	20 11	2 2	2	0
12	5	22 11	2 2	2	+ 3
13	2	19 14	2 3	2.50	− .50
14	2	21	2	2	0
15	2	13 7	2 3	2.50	− .50
16	2	13 7	2 3	2.50	− .50
17	2	13 7	2 3	2.50	− .50
18	2	21	2	2	0
19	2	10 9	2 2	2	0
20	2	20 9 15	2 2 2	2	0
21	2	1 15	2 2	2	0
Average of difference :		+ .18			+ 3.94

the actual sentences imposed and the sentencing attitudes is quite large (+ 1.40).[1] That is to say, magistrates took into account the welfare needs of the offenders and accordingly imposed more severe sentences than they did in good cases. Consequently the sentences they imposed differ from their sentencing attitudes.

The final group of cases (card 6) are trivial offences namely minor stealing. They are committed by boys aged between 14 and 16. Again they are first offenders, with no offences to be taken into consideration.

In the good cases sub-group, the average of the difference between the actual sentences imposed and the sentencing attitudes is negligible (+ .17).[2] This figure demonstrates that the magistrates imposed slightly more severe sentences in good cases than they said they would have imposed in similar circumstances.

The situation is the same in the cases where there is a welfare problem. The difference between the actual sentences imposed in such cases and the sentencing attitudes, unlike other welfare sub-groups, are small (+ .30).[3] That is to say, the magistrates did

[1] Table 63

[2] Table 64

[3] Table 65

TABLE 63

Group 5 Sub-group : Welfare cases

Offenders	Actual Sentences	Magistrates' Code Nos.	Magistrates' Test	Magistrates' Test Average	Difference
1	3	19 3	2 2	2	+ 1
2	5	20 3	2 2	2	+ 3
3	2	20 9 15	2 2 2	2	0
4	2	19 13	2 2	2	0
5	5	23 11	2 2	2	+ 3
					+ 7

Average of difference = + 1.40

TABLE 64

Group 6 Sub-group : Good cases

Offenders	Actual Sentences	Magistrates' Code Nos.	Magistrates' Test	Magistrates Test Average	Difference
1	2	21 18	2 2	2	0
2	2	21 18	2 2	2	0
3	2	21 18	2 2	2	0
4	2	21 18	2 2	2	0
5	2	21 18	2 2	2	0
6	2	21 18	2 2	2	0
7	2	20 23 4	2 1 3	2	0
8	3	19	2	2	+ 1
9	3	19	2	2	+ 1
10	2	1 9	2 2	2	0
11	2	1 9	2 2	2	0
12	1	13 23	2 1	1.50	- .50
13	1	13 23	2 1	1.50	- .50
14	2	19 4 11	2 3 2	2.33	- .33
15	2	19 4 11	2 3 2	2.33	- .33
16	2	19 4 11	2 3 2	2.33	- .33
17	2	19 4 11	2 3 2	2.33	- .33

continued/

continuation Table 64

Offenders	Actual Sentences	Magistrates' Code Nos.	Magistrates' Test	Magistrates' Test Average	Difference
18	2	19 4 11	2 3 2	2.33	− .33
19	4	14 15	2 2	2	+ 2
20	2	19 22 11	2 2 2	2	0
21	2	19 22 11	2 2 2	2	0
22	3	19 13 8	2 2 2	2	+ 1
23	2	10 9	2 2	2	0
24	2	10 9	2 2	2	0
25	3	23	1	1	+ 2
					+ 4.35

Average of Difference = + .17

TABLE 65

Group 6 Sub-group : Welfare cases

Offenders	Actual Sentences	Magistrates' Code Nos.	Magistrates' Test	Magistrates' Test Average	Difference
1	2	20 14 10	2 2 2	2	0
2	2	20 14 10	2 2 2	2	0
3	2	7 13	2 2	2	0
4	2	20 4	2 3	2.50	− .50
5	4	3	2	2	+ 2
					+ 1.50

Average of Difference = + .30

not take into account the welfare needs of the offenders, and accordingly, imposed similar sentences as they did in cases where there is no welfare problems of the offenders. For the very same reason the actual sentences they passed differ only slightly from their sentencing attitudes.

4. Summary and Conclusions

The analysis yields results which demonstrate that unless the offence is trivial (in our sample, minor stealing) the magistrates tend to take into account the welfare needs of the offenders whom they deal with. However, in a trivial offence, they prefer to base their sentencing decisions on the offence itself whatever is the personal background of the offender. Therefore in such cases, even if there is a need for welfare consideration, they tend not to make any drastic sentence.

The second hypothesis is proved right in good cases where there is no need to take into account any welfare consideration. In other words magistrates' sentencing attitudes in good cases are the same (if we ignore the negligible differences) with the actual sentences they made in similar cases. However, the fourth group of good cases is an exception, since magistrates with + .83 difference, seemed to impose more severe sentences in actual cases.

In welfare cases magistrates' sentencing attitudes, are remarkably different from the actual sentences they imposed since they took

into account the welfare needs of the offenders. The exception is with minor stealing cases where the magistrates did not take into account the welfare needs of the offenders.

CHAPTER 13

FACTORS IN JUVENILE COURT SENTENCING

The system of dealing with juvenile offenders allows the juvenile courts a remarkable degree of freedom. With a few exceptions, which will be described in due course the magistrates have a choice between an institutional treatment or supervisory sentence, a fine or both types of discharges. The law does not as a principle direct the magistrates what aims of sentences - retribution, deterrence, protection of society or reformation - should govern their choice. However in the case of juvenile courts and other courts dealing with juveniles there is the welfare consideration. As it was described earlier the juvenile courts must have regard to the welfare of the child or young person. Even here the statute does not say that the child's welfare is to be the only consideration or even the over-riding one; merely that it is to be among the considerations in the mind of the court. The freedom of sentences, however, is influenced by various factors, some of which could not be assessed in this study, because the nature of the available data did not permit the analysis of all factors. However, it seems necessary to describe those factors which could not be analysed in the present study first, before discussing the relative importance of factors that <u>are</u> analysed.

I - FACTORS IN SENTENCING WHICH ARE NOT ANALYSED IN THE PRESENT STUDY

1. Availability

This is one of the ways in which the freedom of selecting sentences by the magistrates is limited by the administration. Some forms of sentences cannot be made unless the court has been told that the facilities in question have actually been provided for their area or unless there are vacancies in the institutes already provided. For example, Leek magistrates reported that they did not make any attendance centre orders because they considered that it would be too far to send the offenders to an attendance centre 12 miles away from Leek.

A detention centre order, too, cannot be imposed by a court unless it has been officially notified that there are places available for offenders of the age group in question from that area. In 1968 it became possible for the first time to make a junior detention centre for boys available to all magistrates' courts in England and Wales. There are, however, sometimes occasions when a boy cannot be admitted to a centre without causing overcrowding and it is still necessary for courts to confirm that there is a vacancy before making a detention centre order.[1] Again in 1968 there was a decrease in the number of committals to approved schools, at the same time the number of places available had also been reduced.[2]

[1] Report on the Work of the Children's Department, 1967-1969, para. 91, H.M.S.O.

[2] ibid., para. 105.

2. Appeals

Another factor which may influence the sentencing is the possibility of an appeal by the offender against the sentence. A juvenile or his parent can appeal to quarter sessions if a sentence imposed by a juvenile court seems to them severe. There is no appeal against a probation order or conditional discharge. Though it is possible to appeal against a fit person, detention centre or approved school orders. These appeals are heard by an "appeals committee" of quarter sessions, who may confirm the magistrates' order, remit it back for reconsideration, or vary it themselves; if they take the last course they can even substitute a more severe measure. In 1968, there were appeals to quarter sessions against 3,965 sentences which represented 3.4 per cent of all the cases in which juveniles and adults had been found guilty in all magistrates' courts in England and Wales: slightly more than half of the appeals (50.3 per cent) resulted in a variation of the sentence.[1] There was no appeal against Leek juvenile court's decisions. In the case of Stoke-on-Trent during 1968, one appeal resulted in the diminution of an approved school order to one of probation. It might be thought that the possibility of a successful appeal must operate as a restraint on most magistrates when they are considering a sentence.

1 Criminal Statistics 1968, England and Wales, Table VII, pp 207, 208, H.M.S.O.

3. Guidance by the Administration

The principle that the judiciary should be free from interference by the administration is a well established principle in Britain. However one of the important exceptions which concerns this topic is: to remit questions of sentencing policy to Departmental Committees or to the Advisory Council on the Treatment of Offenders and to rely on their published reports to influence judges and magistrates.[1] For example, The Advisory Council on the Penal System considered that girls were unlikely to be influenced beneficially by custodial treatment limited to the time available under a detention centre order. In accordance with this recommendation the Secretary of State decided to close and not to replace the only detention centre available for the reception of girls after 31st January 1969. Although this detention centre was in Staffordshire, neither the Stoke-on-Trent or the Leek juvenile courts made any such order for girls in 1968.

Apart from this the Home Office issues a handbook for courts on the treatment of offenders.[2] In this book, besides explaining the practical consequences of each type of sentence, evidence is presented as to the success rates of certain types of offender given certain sentences. It could be asserted that the publication and dissemination of such a book might result in an effect upon magistrates' sentencing behaviour.

[1]Nigel Walker, "Crime and Punishment in Britain", 1965, p. 212.

[2]"The Sentence of the Court", published in 1964, 1969, H.M.S.O. and Supplement to the Children and Young Persons Act, 1969, published in 1971, H.M.S.O.

4. The Offender's Attitude to the Offence

Sentencers not infrequently say that they are influenced by evidence of remorse or the lack of it.[1] All juvenile court magistrates interviewed reported that this is one of the factors which influenced their decisions, particularly in the case of juveniles who were more than eleven years of age, whom, the magistrates claimed, were well aware of the consequences of their offence. The rationale for this factor is that it is consistent with the aim of reformation, since a contrite offender seems less likely to repeat his offence.

5. The Offender's and his Parents' Demeanour in the Court

This may be one of the factors which influences the sentencing behaviour of the magistrates. Two magistrates from Stoke-on-Trent bench and one magistrate from the Leek bench said that they could understand an offender's degree of criminality 'just looking at his eyes'. Although this may be an exaggeration, it may be assumed that the behaviour and the appearance of the juvenile offender and his family in the court could to some extent influence the sentences. However such factors are difficult to quantify.

[1] N. Walker, op. cit., p. 218.

6. Public Sentiment

The occurrence of sudden and spectacular increases in the number of offences within a short period of time may prompt courts to impose more severe sentences than usual, either as a general deterrence or as an expression of the disapproval of the community. Dismissing the appeals of a group of young men against unusually severe sentences for sexual intercourse with under age girls, the Lord Chief Justice said: "..... but in the present case the Court was faced with a situation which must be causing disquiet in the locality and something in the nature of a deterrent sentence was clearly called for .... Treating the sentences .... as deterrent sentences, there was nothing wrong with them and they might very well have a very salutary effect on the neighbourhood".[1]

7. Sentencer's Penal Philosophy

It was pointed out in Chapter 5 that the ambiguity of aim is a feature of most of the sentences at the disposal of the court.[2] Various objectives of sentencing may in a particular case be conflicting considerations and they have an importance of their own and have a separate effect on the decision of the court.[3] Con-

[1] Times Law Report, 22nd December 1963, cited by N. Walker, 'Crime and Punishment in Britain', p. 220.

[2] The law does not tell a court what is to be its primary aim in deciding between sentences. In the case of juvenile offenders, their welfare is not the only consideration or even the overriding one; merely it is to be among the considerations in the mind of the court.

[3] Report of the Interdepartmental Committee on the Business of the Criminal Courts, Cmnd. 1289, 1961, para. 262, H.M.S.O.

sequently there is a considerable scope for the operation of personal idiosyncracies of penal philosophy. Besides in the case of an individual magistrate particular sentence may be passed for different aims on different occasions.

II - FACTORS IN SENTENCING WHICH ARE ANALYSED IN THE PRESENT STUDY

In this part of the study the assessment of the statistical associations between the severity of sentences which juvenile courts pronounced and the various criteria for sentencing will be made. Attention will be focussed upon the effects of variables which are recognized in juvenile court law as suitable measures of the seriousness of a case: the offence, the previous criminal record, offences taken into consideration, the welfare consideration, age and sex.

1. The Offence Factor

The juvenile court law supplies only a rough measure of the relative seriousness of offences. Social enquiry reports need not be rendered if the case is simply one in which the juvenile offender is charged with a "trivial" offence.[1] According to this legal criterion none of the sample offences can be regarded as trivial since social enquiry, and in some cases other reports,

[1] Children and Young Persons Act, 1933, s.35.

were presented to the juvenile courts under study. Sample offences were also selected among offences for which an adult could be sent to prison. In other words magistrates were in a position to impose any type of sentence on the sample offences. In such cases the law grants the magistrates very wide powers to adjust the sentences with prevailing views of the relative seriousness of individual offences.

In this part of the study questions are raised concerning the elements of delinquent behaviour which evoke variation in the reactions of the magistrates. What relative weights do the magistrates assign to two different types of offences against property? In stealing offences is the worth of the stolen goods an important factor in relation to the seriousness of the offence?

Answers to these questions necessitated first and foremost a "weighted index" of the sample offences. This in turn demanded the detailed accounts of the sample offences. Such accounts could be extracted from the police files. However the police were unable to grant access to the reports.

It was decided, therefore, to weight the sample offences according to their relative seriousness without any detailed information. The result is: minor stealing, where the amount of stolen goods or money is up to £1, is classified as the least serious of all the three types of sample offences. Next to it is the serious stealing

(amount between £1 inclusive and £20), and the most serious offence is breaking and entering.[1]

In order to make this type of scaling more consistent and consequently more reliable, offences against property without violence, such as embezzlement, receiving, false pretences, fraud, taking and driving away, and non-indictable stealing such as, stealing trees and shrubs, stealing fences etc., were excluded from the sample. Additionally, offences of burglary and entering with intent to commit offence were also excluded from the breaking and entering category, as well as the attempts to stealing and breaking and entering.

Then, both the offences and the sentences are scaled according to increasing seriousness, beginning with the least serious offence and sentence. This enabled us to use the nonparametric statistical test, chi-square, which is appropriate for nominal data because it focuses on frequencies in categories, i.e. on enumerative data.[2]

The Analysis

There is a high degree of correspondence between the increasing seriousness of the offences and the increasing severity of the

[1]See Chapter 7 for detailed information on the ranking of offences; and the conclusion in Chapter 11.

[2]S. Siegel, op. cit., p.23.

sentences imposed.[1] Discharges, both absolute and conditional, were made in 72.3 per cent of all minor stealing offences, whereas 56 per cent of serious stealing cases and 27 per cent of the most serious offence in the sample i.e. breaking and entering, were disposed by the same measures. The relatively more severe sentence, fine, was made in the case of 7.1 per cent of all minor stealing, 5.5 per cent of all serious stealing and 3.8 per cent of breaking and entering offences.[2] Attendance centre and probation, which were ranked by the magistrates in relation to the degree of severity next to the sentences which involve the removal of the offender from his family, were imposed in 20.4 per cent of minor stealing, 31.6 per cent in serious stealing and 50.4 per cent of all breaking and entering offences. Finally, the most severe sentences such as, fit person, detention centre and approved school were made in 6.8 per cent of all serious stealing and 18.3 per cent of all breaking and entering, but none in minor stealing offences. These figures show that there is a positive correlation between the increasing seriousness of offences and the increasing severity of the sentences imposed in Stoke-on-Trent juvenile courts.

[1] Table 66. Chi-squared = 56.24

[2] Altogether 19 fines were imposed. All except one were made in the case of 14-16 inclusive age group; 13 out of 19 of them were imposed on 16 year old young persons who were working at the time of the offence

RELATION OF SERIOUSNESS OF OFFENCE TO SEVERITY OF SENTENCE

TABLE 66 STOKE-ON-TRENT

SENTENCES	OFFENCES (According to increasing seriousness) Minor Stealing		Serious Stealing		Breaking and Entering	
	No.	%	No.	%	No.	%
Absolute Discharge	3	3	0	0	0	0
Conditional Discharge	68	69.3	81	55.8	28	27.1
Fine	7	7.1	8	5.5	4	3.8
Attendance Centre	5	5.1	5	3.4	6	5.8
Probation	15	15.3	41	28.2	46	44.6
Fit Person	0	0	3	2	3	2.9
Detention Centre	0	0	1	.6	1	.9
Approved School	0	0	6	4.1	15	14.5
TOTAL	98	100	145	100	103	100
Distribution in all cases in percentages		28.3		41.8		29.2

The Chi-squared test

Significant (P = .001)

As far as the Leek juvenile court is concerned 3 out of 4 minor stealing were conditonally discharged, whereas in the case of all serious stealing and in the case of 5 out of 6 breaking and entering offences probation orders were made.[1] It is clear that in Leek too, minor stealing was treated less severely than two other types of offence. There may be two interpretations about the apparently more severe sentences attached to serious stealing than breaking and entering:

1) In Leek the percentage of stealing offences is much higher than both the Stoke-on-Trent and the national average. This might have affected the Leek juvenile court magistrates' decision.

2) The only breaking and entering which was conditionally discharged might have been regarded leniently since it was committed in a half derelict warehouse.

However, it is impossible to make statistical inferences from the sentences attached to serious stealing and breaking and entering since the numbers in the Leek sample are very small.

While analysing the relationship between the seriousness of the offence and the severity of the sentence two questions come into mind. Whether those offenders who committed more serious offences have more serious nature of previous criminal record? If so, whether there is a relation between the severity of the sentence

[1]Table 67

RELATION OF SERIOUSNESS OF OFFENCE TO SEVERITY OF SENTENCE

TABLE 67 — LEEK

SENTENCE	OFFENCES					
	Minor Stealing		Serious Stealing		Breaking and Entering	
	No.	%	No.	%	No.	%
Absolute Discharge						
Conditional Discharge	3	42.8	0		1	16.6
Fine						
Attendance Centre						
Probation Order	4	57.1	11	100	5	83.3
Fit Person						
Detention Centre						
Approved School						
TOTAL	7	100	11	100	6	100
Distribution in all cases in percentages		29.1		45.8		25

and the seriousness of the offence where the offenders have no previous criminal records.

Answering the first question 78.5 per cent of those committed minor stealing were first offenders, whereas the percentages for serious stealing and breaking and entering are: 76.5 and 60.1 per cent respectively.[1] Those offenders who were discharged and/or fined and/or sent to an attendance centre previously, are more in the minor stealing group than in serious stealing and breaking and entering (percentages are 14.2, 11 and 8.7 per cent respectively). However so far as the more serious nature of previous criminal record is concerned the situation is different. Those who were put on probation once before constitute 6.1 per cent of all those who committed minor stealing but 8.2 per cent of serious stealing and 17.4 per cent of breaking and entering. Next comes more serious previous criminal record, i.e. "to be put on probation on two different occasions"; and only 1 per cent of those who had committed minor stealing, 2.7 per cent who had committed serious stealing and 8.7 per cent who had committed breaking and entering had had such an experience. So far as the most serious previous criminal record (removal from the family), none of those offenders who committed minor stealing had such a record but 1.3 per cent of those committed serious stealing, and 4.5 per cent of those committed breaking and entering had been put on probation on two

[1]Table 68, Chi-SQuare = 26.29

DISTRIBUTION OF OFFENCES ACCORDING TO THE NATURE OF PREVIOUS CRIMINAL RECORD

TABLE 68

STOKE-ON-TRENT

Nature of Previous Criminal Record (According to increasing seriousness)

OFFENCES	None		Absolute Discharge and/or Conditional Discharge and/or Fine and/or Attendance Centre		Probation once only		Probation on two different occasions		Fit Person once only		Probation once only and an Institutional Treatment		Probation on two different occasions and Fit Person once only		Probation on two different occasions and an Instituional Treatment once only		TOTAL
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	%
Minor Stealing	77	78.5	14	14.2	6	6.1	1	1	0	0	0	0	0	0	0	0	100
Serious Stealing	111	76.5	16	11	12	8.2	4	2.7	0	0	2	1.3	0	0	0	0	100
Breaking and Entering	62	60.1	9	8.7	18	17.4	9	8.7	1	.9	1	.9	1	.9	2	1.8	100

The Chi-square Test

Significant (P = .001)

different occasions before they committed their recent offence. Therefore the conclusion is that those who committed more serious offences have also more serious nature of previous criminal record.

The above tendency can also be traced in the case of offenders who were dealt with by the Leek juvenile court.[1] Four out of seven who had committed minor stealing, five out of eleven offenders who had committed serious stealing and two out of five offenders who had committed breaking and entering were first offenders. 43.2 per cent of minor stealing, 45.4 per cent of serious stealing and only 11.6 per cent of all breaking and entering cases had been fined and/or discharged. On the other hand there was nobody who had been put on probation before in the minor stealing group, whereas in serious stealing and in breaking and entering cases the percentages are 9.1 and 50 per cent respectively. In spite of the small sample, the inference can be made that those who committed more serious offences have a more extensive criminal record.

Taking into account the relationship that more serious offences were committed by offenders who had more serious nature of previous criminal record, a very important question arises. Whether there is

[1] Table 69

DISTRIBUTION OF OFFENCES ACCORDING TO THE NATURE OF PREVIOUS CRIMINAL RECORD — LEEK

TABLE 69

OFFENCES	Nature of Previous Criminal Record: None		Absolute Discharge and/or Conditional Discharge and/or Fine and/or Attendance Centre		Probation once only		TOTAL
	No.	%	No.	%	No.	%	%
Minor Stealing	4	56.7	3	43.2	0	0	100
Serious Stealing	5	45.4	5	45.4	1	9.1	100
Breaking and Entering	2	33.3	1	11.6	3	50	100

any relationship between the severity of the sentence and the seriousness of the offence in the case of first offenders? It is important to answer this question because if there is no such relationship, then we infer that the previously established relationship between more severe sentences and more serious offences are due to the more serious nature of the previous criminal record of the offenders who committed more serious offences, but not due to the seriousness of the offences themselves.

The analysis of the relevant data reveals that there is a statistically significant relationship between the seriousness of the offences and the severity of the sentences even when there is no previous criminal record of the offenders.[1] 80.5 per cent of all minor stealing cases were dealt with by discharges, whereas percentages for serious stealing and breaking and entering were 63% and 41% respectively. The use of fines descends as offences become more serious: 7.7 per cent in minor stealing, 5.4 per cent in serious stealing, and 4.8 per cent in breaking and entering. Attendance centre and probation were the most severe sentences that were imposed in minor stealing offences (11.5 per cent), whereas they constituted 28.8 per cent of serious stealing and 46.7 per cent of all breaking and entering. "Removal from home" was not made in minor stealing cases but was imposed on a small scale (2.7 per cent) in the case of serious stealing, and 3.2 per cent

[1]Table 70, Chi-square = 24.78

RELATION OF SERIOUSNESS OF OFFENCE TO SEVERITY OF SENTENCE

IN THE CASE OF FIRST OFFENDERS

TABLE 70 STOKE-ON-TRENT

SENTENCES	OFFENCES					
	Minor Stealing		Serious Stealing		Breaking and Entering	
	No.	%	No.	%	No.	%
Absolute Discharge	2	2.5	0	0	0	0
Conditional Discharge	60	78	70	63	28	45.1
Fine	6	7.7	6	5.4	3	4.8
Attendance Centre	3	3.8	4	3.6	5	8
Probation	6	7.7	28	25.2	24	38.7
Fit Person	0	0	0	0	1	1.6
Detention Centre	0	0	0	0	0	0
Approved School	0	0	3	2.7	1	1.6
TOTAL	77	100	111	100	62	100

The Chi-squated Test

... Significant (P = .001)

in the case of breaking and entering. However it should be noted that though the relationship between the seriousness of the offence and the severity of the sentence in the case of first offenders is statistically significant, this significance is not as great as it is in the case of the relationship between the seriousness of the offence and the severity of the sentence in the case of all offenders (whether they are first offenders or not).[1] This indicates, as will be proved later, that the nature of previous criminal record has a considerable influence on the severity of the sentences. Inferences cannot be made from the Leek sample since there were only eleven cases.[2]

Conclusion

Thus the findings demonstrate that differences in the seriousness of offences produce the variations in sentences, though to a lesser extent than the previous criminal record factor. The effect of previous criminal record is analysed in the following section.

2. The "Previous Criminal Record" Factor

The principle that a court should consider an adult offender's previous convictions in passing a sentence is well established in

[1]Chi-square is 56.24 in the case of all offenders (Table 66), but only 24.78 in the case of first offenders.

[2]Table 71

RELATION OF SERIOUSNESS OF OFFENCE TO SEVERITY OF SENTENCE

IN THE CASE OF FIRST OFFENDERS

TABLE 71 LEEK

SENTENCES	OFFENCES					
	Minor Stealing		Serious Stealing		Breaking and Entering	
	No.	%	No.	%	No.	%
Absolute Discharge						
Conditional Discharge	2	50			1	50
Fine						
Attendance Centre						
Probation Order	2	50	5	100	1	50
Fit Person						
Detention Centre						
Approved School						
TOTAL	4	100	5	100	2	100

the criminal law and in judicial custom. However, there is no such limitation in the law dealing with juvenile offenders as a principle. The only exception is the attendance centre order. If the juvenile offender has previously been sentenced to borstal training, sent to a detention centre or an approved school, an attendance centre order cannot be made in his case. Apart from this, the juvenile court magistrates have complete freedom in imposing sentences, whatever the nature of previous criminal record. In this part of the study the relationship between the seriousness of the previous criminal record and the severity of sentences imposed is analysed. In most of this part, the consideration of the nature of previous criminal record is preferred to the consideration of the number of previous convictions, as it is a more reliable criterion.[1] However, the first table constitutes an exception since it does relate the number of previous convictions to the seriousness of sentences. The value of chi-square is 120.00 in the "number of previous convictions" table whereas the corresponding figure is 171.09 in the "nature of previous record" table. This confirms the strength of the selection of the latter as a criterion in the ensuing analysis.

The analysis yields a statistically significant relationship between the increasing number of previous convictions and the

[1]See Chapter 7 for the rationale of such a choice.

increasing seriousness of offences.[1] While 64 per cent of all first offenders were discharged, this is so only in the case of 39.3 per cent of all offenders with one previous conviction, 15 per cent of all offenders with two previous convictions and 12.1 per cent of all offenders with three or four previous convictions. None of the offenders with five or six or seven previous convictions were discharged, absolutely or conditionally. A similar descending tendency can also be observed in the case of fines: 6 per cent of those offenders with none or with one previous conviction were fined, whereas the percentages for those offenders with two, and with three or four previous convictions were 5% and 3%, respectively. Attendance centre and probation orders were mostly imposed on offenders with only one previous conviction (45.3 per cent); in the case of offenders with two previous convictions the rate is (70 per cent) and in the case of offenders with three or four previous convictions the rate is (45.4 per cent). However in the case of first offenders the percentage is 28% and it is 30% in the case of those offenders with five or more previous convictions. The most serious sentences, those involving the removal of the offender from home, were made in the case of only 2 per cent of all first offenders, 9 per cent of all offenders with one previous conviction, 10 per cent of all offenders with two previous convictions, but 39.2 per cent of

[1]Table 72, chi-square = 120.00

all offenders with three or four previous convictions and 60 per cent of all offenders with five or more previous convictions. The results proved that it is statistically significant that the greater the number of previous convictions an offender has, the more severe a sentence is imposed on him.

The small Leek sample shows an identical tendency[1] since 27.2 per cent of first offenders but only 16.6 per cent of offenders with one previous conviction were discharged. On the other hand, 72.7 per cent of first offenders were put on probation, whereas the percentage for those offenders with one previous conviction is 83.3%. All the other seven offenders whose number of previous convictions are two or more were put on probation by the Leek court.

A similar analysis which investigated the relationship between the seriousness of the nature of the previous criminal record and the sentences, yielded the same result as above. It is statistically significant that the more serious is the nature of the previous criminal record more severe is the sentence.[2] Discharges, which were ranked as least serious offences, were made in the case of 70 per cent of first offenders, in the case of 26 per cent of offenders whose previous criminal record consisted of absolute and/or conditional discharge and/or fine and/or attendance centre. Only 19

[1]Table 73

[2]Table 74, Chi-square = 171.10

RELATION OF NUMBER OF PREVIOUS CONVICTIONS TO SEVERITY OF SENTENCE IN ALL CASES

TABLE 72 STOKE-ON-TRENT

SENTENCES	NUMBER OF PREVIOUS CONVICTIONS									
	0		1		2		3-4(inc)		5-7(inc)	
	No.	%	No.	%	No.	%	No.	%	No.	%
Absolute Discharge	2	.8	1	3	0	0	0	0	0	0
Conditional Discharge	158	63.2	12	36.3	3	15	4	12.1	0	0
Fine	15	6	2	6	1	5	1	3	0	0
Attendance Centre	12	4.8	2	6	0	0	1	3	1	10
Probation Order	58	23.2	13	39.3	14	70	14	42.4	3	30
Fit Person	1	.4	1	3	0	0	3	9	1	10
Detention Centre	0	0	0	0	0	0	2	6	0	0
Approved School	4	1.6	2	6	2	10	8	24.2	5	50
TOTAL	250	100	33	100	20	100	33	100	10	100

The Chi-square Test

Significant (P = .001)

RELATION OF NUMBER OF PREVIOUS CONVICTIONS TO SEVERITY OF SENTENCE

TABLE 73 LEEK

SENTENCES	NUMBER OF PREVIOUS CONVICTIONS									
	0		1		2		3-4(inc)		5-7(inc)	
	No.	%	No.	%	No.	%	No.	%	No.	%
Absolute Discharge										
Conditional Discharge	3	27.2	1	16.6						
Fine										
Attendance Centre										
Probation Order	8	72.7	5	83.3	6	100			1	100
Fit Person										
Detention Centre										
Approved School										
TOTAL	11	100	6	100	6	100			1	100

RELATION OF NATURE OF PREVIOUS RECORD TO SEVERITY OF SENTENCE IN ALL CASES

TABLE 74

STOKE-ON-TRENT

Nature of Previous Criminal Record (According to increasing seriousness)

SENTENCES	None		Absolute Discharge and/or Conditional Discharge and/or Fine and/or Attendance Centre		Probation once only		Probation on two different occasions		Fit Person once only		Probation once only AND Institutional Treatment once only		Probation on two different occasions AND Fit Person once		Probation on two different occasions AND Institutional treatment once only	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Absolute Discharge	2	.8	1	2.5	0	0	0	0	0	0	0	0	0	0	0	0
Conditional Discharge	158	63.2	11	26	7	19.4	1	7.1	0	0	0	0	0	0	0	0
Fine	15	6	3	8	1	2.7	0	0	0	0	0	0	0	0	0	0
Attendance Centre	12	4.8	1	2.5	3	8.3	0	0	0	0	0	0	0	0	0	0
Probation Order	58	23.2	20	51.2	19	52.7	4	28.5	0	0	0	0	0	0	0	0
Fit Person	1	.4	0	0	2.	5.5	2	14.8	0	0	0	0	0	0	1	50
Detention Centre	0	0	2	5.1	0	0	0	0	0	0	0	0	0	0	0	0
Approved School	4	1.6	1	2.5	4	11.1	7	50	1	100	3	100	1	100	1	50
TOTAL	250	100	39	100	36	100	14	100	1	100	3	100	1	100	2	100

The Chi-square Test Significant (P = .001)

per cent of offenders with one previous experience of probation and only one offender with two probation orders imposed on him on two different occasions previously benefit from these most lenient sentences. Offenders who at least one one occasion were removed from home were not discharged, either abolutely or conditionally. Fines were imposed more in the second least serious nature of previous conviction group (8 per cent) than both the first offenders group (6 per cent) and the third least serious nature of previous conviction group - put on probation once before - (2.7 per cent). The second most severe sentences, i.e. attendance centre and probation, were made in the case of half of the offenders who had had the experience of probation once before, or those offenders whose previous criminal records included discharges and/or fines and/or attendance centres. As we have seen before, the use made of fit person, detention centre or approved school were negligible in the case of first offenders (2 per cent) and small (7.6 per cent) in the case of those offenders whose previous criminal records include discharges and/or fine and/or attendance centre. On the other hand 16.6 per cent of offenders whose previous criminal records included "probation once before"; 64.8 per cent of offenders whose previous criminal records consist of "probation on two different occasions"; and all offenders whose previous convictions involve some form of "removal from home" were dealt with by being removed from their homes. Thus the results proved that it is statistically significant that the more severe the nature of an offender's previous conviction, the more severe

the sentence imposed on him.

The Leek data indicates an identical tendency.[1] Eight of eleven first offenders, eight out of nine offenders whose previous criminal records involve either discharges and/or fines and/or attendance centre and all offenders whose previous criminal records involve "probation once before" were put on probation, which was the most severe sentence imposed by the Leek juvenile court.

The previous analysis of the relationship between the seriousness of the nature of previous record and the severity of sentence ignores the differences of the degree of seriousness of the three

[1] Table 75

RELATION OF NATURE OF PREVIOUS RECORD TO SEVERITY OF SENTENCE IN ALL CASES

TABLE 75 LEEK

SENTENCES	NATURE OF PREVIOUS CRIMINAL RECORD					
	None		Absolute Discharge and/or Conditional Discharge and/or Fine and/or Attendance Centre		Probation once only	
	No.	%	No.	%	No.	%
Absolute Discharge						
Conditional Discharge	3	27.2	1	11.1		
Fine						
Attendance Centre						
Probation Order	8	72.7	8	88.8	4	100
Fit Person						
Detention Centre						
Approved School						
TOTAL	11	100	9	100	4	100
Distribution in all cases percentages		45.8		37.5		16.6

sample offences. It may well be the case that there is a relationship between the nature of previous criminal record and the sentences imposed for the two most serious offences in our sample, i.e. serious stealing and breaking and entering. However, this may not be so in the case of minor stealing where the degree of seriousness of that particular offence may be the decisive factor. In other words the previous analysis levels out the would-be differences among different offences in their relation to the nature of the previous record. It was decided, therefore, the analyse the relationship between the seriousness of the offences and the seriousness of the nature of previous criminal record separately.

The analysis established that there is a statistically significant relationship between the seriousness of the nature of previous criminal record and the severity of the sentence imposed in breaking and entering offences.[1] Nearly half of first offenders were conditionally discharged (45.1 per cent). However, none of the offenders with previous convictions were treated in the same way. Those who were "on probation once before" were fined slightly more (5.5 per cent) than those with no previous convictions (4.8 per cent). The second most severe sentences, namely attendance centre and probation, were used in the following proportions: in the case of first offenders 46.7 per cent; in the case of those offenders who were either discharged and/or fined and/or sent to

[1]Table 76. Chi-square = 60.64.

RELATION OF NATURE OF PREVIOUS RECORD TO SEVERITY OF SENTENCE IN BREAKING AND ENTERING CASES

TABLE 76

STOKE-ON-TRENT

SENTENCES	Nature of Previous Criminal Record: None		Absolute Discharge and/or Conditional Discharge and/or Fine and/or Attendance Centre		Probation once only		Probation on two different occasions		Fit Person once only		Probation once only AND Institutional Treatment once only		Probation on two different occasions AND Fit Person once		Probation on two different occasions AND Institutional Treatment once	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Absolute Discharge	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Conditional Discharge	28	45.1	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Fine	3	4.8	0	0	1	5.5	0	0	0	0	0	0	0	0	0	0
Attendance Centre	5	8	0	0	1	5.5	0	0	0	0	0	0	0	0	0	0
Probation Order	24	38.7	7	77.7	12	66.6	3	33.3	0	0	0	0	0	0	0	0
Fit person	1	1.6	0	0	1	5.5	0	0	0	0	0	0	0	0	1	50
Detention Centre	0	0	1	11.1	0	0	0	0	0	0	0	0	0	0	0	0
Approved School	1	1.6	1	11.1	3	16.6	6	66.6	1	100	1	100	1	100	1	50
TOTAL	62	100	9	100	18	100	9	100	1	100	1	100	1	100	2	100

The Chi-square Test Significant (P = .001)

an attendance centre previously 77.7 per cent; in the case of those who were put on probation once before 72.1 per cent; and in the case of offenders who had experienced probation on two different times previously 33.3 per cent. None of those offenders who committed breaking and entering and had previous convictions which involved removal from home were dealt with with attendance centre or probation orders. However as the figures reveal most severe sentences, namely those involving removal from home, were made in the case of those offenders who had most serious nature of previous criminal record. Only two out of sixty-two breaking and entering offenders (3.2 per cent) who had no previous convictions were removed from home whereas the percentages were: 22.2 per cent for those who were discharged and/or fined and/or sent to an attendance centre previously; 22.1 per cent for those who were "on probation once before"; 66.6 per cent for those who were "on probation on two different occasions". All five offenders, who committed breaking and entering and had been removed from home previously had to face the same sentences. All these show that the more serious is the nature of previous criminal record of offenders who committed breaking and entering the more severe is the sentence they receive.

The analysis also yielded statistically significant results in the case of serious stealing cases.[1] 63 per cent of first offenders

[1]Table 77, Chi-square = 45.63.

RELATION OF NATURE OF PREVIOUS RECORD TO SEVERITY OF SENTENCE IN SERIOUS STEALING CASES

TABLE 77

STOKE-ON-TRENT

	Nature of Previous Criminal Record											
	None		Absolute Discharge and/or Conditional Discharge and/or FINE and/or Attendance Centre		Probation once only		Probation on two different occasions		Fit Person once only		Probation once only AND Institutional Treatment once only	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Absolute Discharge	0	0	0	0	0	0	0	0	0	0	0	0
Conditional Discharge	70	63	5	31.2	5	41.6	1	25	0	0	0	0
Fine	6	5.4	2	12.5	0	0	0	0	0	0	0	0
Attendance Centre	4	3.6	1	6.2	0	0	0	0	0	0	0	0
Probation Order	28	25.2	7	43.7	5	41.6	0	0	0	0	1	50
Fit Person	0	0	0	0	1	8.3	2	50	0	0	0	0
Detention Centre	0	0	1	6.2	0	0	0	0	0	0	0	0
Approved School	3	2.7	0	0	1	8.3	1	25	0	0	1	50
TOTAL	111	100	16	100	12	100	4	100	0	100	2	100

The Chi-square Test Significant (P = .001)

were dealt with by discharges, the least severe sentence; 5.4 per cent with the second least severe sentence, fines; 28.8 per cent either ordered to attend an attendance centre or put on probation. Only 2.7 per cent sent away from home, the most serious sentence. With respect to those offenders who had had the experience of discharges and/or fines and/or attendance centres; 31.2 per cent of them were dealt with by discharges; 12.5 per cent by fines; half of them (49·9 per cent) by attendance centre or probation; only 6.2 per cent were removed from home. Offenders who were put on "probation once before" were dealt with at varying levels of severity: 41.6 per cent discharged; another 41.6 per cent put on probation, and the remaining (16.9 per cent) removed from home. There were four offenders who had experienced probation on two different occasions; one of them discharged, the remaining three sent away from home. The number of offenders who were sent away from home previously in the serious stealing category were two: one of them was put on probation, the other one sent away again. So we may conclude that the more serious the nature of the previous criminal record the more severe the sentence offenders receive in serious stealing cases.

In the case of minor stealing the relationship between the sentence and the nature of the previous criminal record is statistically significant.[1] The analysis of minor stealing data shows that 80.4

[1]Table 78, Chi-square = 19.33.

RELATION OF NATURE OF PREVIOUS RECORD TO SEVERITY OF SENTENCE IN MINOR STEALING CASES

TABLE 78 STOKE-ON-TRENT

SENTENCES	NATURE OF PREVIOUS CRIMINAL RECORD							
	None		Absolute Discharge and/or Conditional Discharge and/or Fine and/or Attendance Centre		Probation once only		Probation on two different occasions	
	No.	%	No.	%	No.	%	No.	%
Absolute Discharge	2	2.5	1	7.1	0	0	0	0
Conditional Discharge	60	77.9	6	42.8	2	33.3	0	0
Fine	6	7.7	1	7.1	0	0	0	0
Attendance Centre	3	3.8	0	0	2	33.3	0	0
Probation	6	7.7	6	42.8	2	33.3	1	100
TOTAL	77	100	14	100	6	100	1	100

The Chi-square Test

Significant (P = .001)

per cent of first offenders were discharged, 7.7 per cent fined, and 11.5 per cent sent either to an attendance centre or put on probation. Offenders with previous convictions of discharges and/or fines and/or attendance centres dealt with as follows: 49.9 per cent discharged, 7.1 per cent fined, and 42.8 per cent dealt with by the most severe sentences in minor stealing cases, namely attendance centre and probation order. Two offenders with previous convictions of "on probation once before" conditionally discharged, whereas the other four offenders with similar previous criminal record dealt with either by attendance centre or by probation. The analysis shows a significant relationship in that the more serious is the nature of previous criminal record, the more severe is the sentence in minor stealing cases.

Conclusion

To sum up, the findings demonstrate that differences in the nature of the previous criminal record produces the variations in sentences.

3. "Offences Taken into Consideration" Factor

Offences taken into consideration is a procedure by which an offender who has been convicted and is about to be sentenced can protect himself against subsequent prosecution and sentence for other offences of a similar kind by inviting the court to bear them in mind when sentencing him on this occasion. Offences taken into consideration indicates the extensiveness of the criminal activity. It is, therefore, thought that offences taken into consideration may be another important factor in sentencing.

However, analysis of the figures yielded results which show that the relationship between the number of offences taken into consideration to the severity of the sentence is non-significant.[1] Cases with no offences taken into consideration are dealt with as follows: 53.8 per cent were discharged, either absolutely or conditionally, 5.6 per cent fined, 32 per cent either ordered to attend attendance centres or put on probation, whereas 8.3 per cent imposed sentences which involved removal from home. On the other hand, three offenders with one or two offences taken into consideration were discharged, one fined, and the other one put on probation. Half of the ten offenders who had between three and five offences taken into consideration, were put on probation, one was removed from home, four others

[1] Table 79, Chi-square = 15.95.

RELATION OF NUMBER OF OFFENCES TAKEN INTO CONSIDERATION

TO SEVERITY OF SENTENCE

TABLE 79 STOKE-ON-TRENT

SENTENCES	Number of Offences taken into Consideration							
	0		1-2(inc)		3-5(inc)		6-9(inc)	
	No.	%	No.	%	No.	%	No.	%
Absolute Discharge	3	.9	0	0	0	0	0	0
Conditional Discharge	170	52.9	3	60	4	40	0	0
Fine	18	5.6	1	20	0	0	0	0
Attendance Centre	16	4.9	0	0	0	0	0	0
Probation	87	27.1	1	20	5	50	9	90
Fit Person	5	1.5	0	0	1	10	0	0
Detention Centre	2	.6	0	0	0	0	0	0
Approved School	20	6.2	0	0	0	0	1	10
TOTAL	321	100	5	100	10	100	10	100

The Chi-square Test

Non-significant (P = .001)

were conditionally discharged (40 per cent). 90 per cent of offenders who had between six and nine offences taken into consideration were put on probation, and 10 per cent were removed from home. The corresponding percentage for the most severe sentences, namely those involving removal from home, was 8.3 per cent in the case of offenders with no offences taken into consideration.

To sum up, these findings demonstrate that the number of offences taken into consideration does not produce variations in sentencing.

4. The Welfare Factor

The importance of the welfare consideration in juvenile court law was dealt with at length in the previous chapters. Here we shall assess the relationship of the welfare consideration to the severity of sentences. Various legal, social, psychological and educational data were collected from the reports that were presented to the sample juvenile courts. Personal background of each offender were classified in three groups as good, average and bad from the viewpoint of their welfare problems.[1]

According to the hypothesis those offenders who have scored good do not have any welfare problems, accordingly they are not in need of drastic sentences. On the other hand those offenders who scored average

[1]See Chapter 7.

or bad do have welfare problems; they are the most likely subjects of welfare consideration, and accordingly in need of more drastic sentences than those offenders who scored good.

Analysis of the figures yields a statistically significant relationship between the quality of personal backgrounds of offenders and the sentences imposed on them.[1] Sentences which were ranked as least severe, namely discharges, were applied for 67.7 per cent of all offenders who scored good; for 26.2 per cent of all offenders who scored average, and only 20.5 per cent of offenders who scored bad. Fines, which were ranked as next least severe sentences, were imposed on 6.8 per cent of offenders who scored good, but 4.9 per cent of all offenders who had scored average and 1.4 per cent of all offenders who scored bad. The second most severe sentences, attendance centre and probation together, were imposed as follows: 23.8 per cent in the case of offenders who scored good, 52.4 per cent in the case of those offenders who scored average, and 49.9 per cent in the case of offenders who scored bad. So far as the sentences which involve removal from home are concerned (they were ranked as most severe offences) none of the offenders out of 218 who scored good was dealt with in this way, whereas the corresponding figures for average and bad personal backgrounds were 16.3 and 27.8 per cent, respectively. The Leek data produced the same result.[2] One one out of five offenders with

[1] Table 80, Chi-square = 107.25.

[2] Table 81

RELATION OF "HOME BACKGROUND AND PERSONAL FACTORS"

TO SEVERITY OF SENTENCE IN ALL CASES

TABLE 80 STOKE-ON-TRENT

SENTENCES	Home Background and Personal Factors: Good		Average		Bad	
	No.	%	No.	%	No.	%
Absolute Discharge	3	1.3	0	0	0	0
Conditional Discharge	147	67.7	16	26.2	14	20.5
Fine	15	6.8	3	4.9	1	1.4
Attendance Centre	11	5	1	1.6	4	5.8
Probation	41	18.8	31	50.8	30	44.1
Fit Person	0	0	1	1.6	5	7.3
Detention Centre	0	0	2	3.3	0	0
Approved School	0	0	7	11.4	14	20.5
TOTAL	217	100	61	100	68	100
Distribution in all cases percentages		62.7		17.6		19.6

The Chi-square Test

Significant (P = .001)

RELATION OF "HOME BACKGROUND AND PERSONAL FACTORS"

TO SEVERITY OF SENTENCE IN ALL CASES

TABLE 81 LEEK

SENTENCES	Home Background and Personal Factors					
	Good		Average		Bad	
	No.	%	No.	%	No.	%
Absolute Discharge						
Conditional Discharge	4	80	0		0	
Fine						
Attendance Centre						
Probation	1	20	9	100	10	100
Fit Person						
Detention Centre						
Approved School						
TOTAL	5	100	9	100	10	100
Distribution in all cases percentages		20.7		37.5		41.6

good personal background was put on probation, whereas all offenders with average or bad personal backgrounds were imposed the most severe sentence in Leek, namely probation.

Therefore the relation between the poverty (non-material) of the personal background to the severity of sentence is statistically significant. That is to say, those cases where there is no need to take into account the welfare needs of the offender, namely good cases, were imposed light sentences, whereas average and bad cases received sentences with increasing degree of severity.

However, the combination of the data for these three categories of offence tends to obscure the relationship between poverty of personal background and severity of sentences received. In the following paragraphs, therefore, similar assessments on the lines of previous analysis will be made in the case of three categories of offences separately.

Beginning with the most serious offence, breaking and entering, analysis revealed statistically significant relationship between welfare needs and the severity of sentences.[1] Discharges were made in 53.3 per cent of all good, 8.6 per cent of all average, and 5.7 per cent of all bad cases. Fines, which were ranked as the second least severe sentence, were made in 2.2 per cent of all good cases,

[1]Table 82

RELATION OF "HOME BACKGROUND AND PERSONAL FACTORS"

TO SEVERITY OF SENTENCE IN BREAKING AND ENTERING CASES

TABLE 82 STOKE-ON-TRENT

SENTENCES	Home Background and Personal Factors					
	Good		Average		Bad	
	No.	%	No.	%	No.	%
Absolute Discharge	0	0	0	0	0	0
Conditional Discharge	24	53.3	2	8.6	2	5.7
Fine	1	2.2	2	8.6	1	2.8
Attendance Centre	2	4.4	1	4.3	3	8.5
Probation	18	40	12	52.1	16	45.7
Fit Person	0	0	0	0	3	8.5
Detention Centre	0	0	1	4.3	0	0
Approved School	0	0	5	21.7	10	28.5
TOTAL	45	100	23	100	35	100

The Chi-square Test
Significant (P = .001)

and went up to 8.6 per cent in average cases, and then down (2.8 per cent) in the most problematic cases, namely bad personal background. The second most severe sentences, attendance centre and probation, were made for 44.4 per cent of all offenders with good backgrounds, 56.4 per cent for all offenders with average backgrounds and 54.2 per cent for all those offenders with bad backgrounds. The highest percentage for most severe sentences, such as fit person, detention centre and approved school, was 37 per cent and was imposed in the case of bad cases. Next came offenders with average backgrounds (22.6 per cent). None of the offenders with good backgrounds were removed from home. Therefore the conclusion is that there is a statistically significant relationship between the degree of badness of the personal background and the degree of severity of sentence. More severe sentences were made in cases where there was a welfare consideration. A very tentative conclusion reveals a similar tendency in Leek too,[1] where one of the two offenders who had a good personal background was conditionally discharged whereas all average and bad cases were put on probation.

Analysis of serious stealing cases also revealed a statistically significant relationship between the seriousness of welfare needs and the severity of sentence.[2] Least severe sentences were mostly

[1] Table 83

[2] Table 84, Chi-square = 37.48

RELATION OF "HOME BACKGROUND AND PERSONAL FACTORS"

TO SEVERITY OF SENTENCE IN BREAKING AND ENTERING CASES

TABLE 83 LEEK

SENTENCES	Home Background and Personal Factors					
	Good		Average		Bad	
	No.	%	No.	%	No.	%
Absolute Discharge						
Conditional Discharge	1	50				
Fine						
Attendance Centre						
Probation	1	50	1	100	3	100
Fit Person						
Detention Centre						
Approved School						
TOTAL	2	100	1	100	3	100

RELATION OF "HOME BACKGROUND AND PERSONAL FACTORS" TO SEVERITY OF SENTENCE IN SERIOUS STEALING CASES

TABLE 84 STOKE-ON-TRENT

SENTENCES	Home Background and Personal Factors: Good		Average		Bad	
	No.	%	No.	%	No.	%
Absolute Discharge	0	0	0	0	0	0
Conditional Discharge	63	70.7	10	33.3	8	30.7
Fine	7	7.8	1	3.3	0	0
Attendance Centre	5	5.6	0	0	0	0
Probation	14	15.7	15	50	12	46.1
Fit Person	0	0	1	3.3	2	7.6
Detention Centre	0	0	1	3.3	0	0
Approved School	0	0	2	6.6	4	15.3
TOTAL	89	100	30	100	26	100

The Chi-square Test
Significant (P = .001)

(71.5 per cent) imposed in good cases. Sentences of intermediate degree of severity were made in average cases, whereas the most severe sentences were mostly (22.9 per cent) imposed in bad cases. As there was nobody with a good background in the Leek sample, inferences cannot be made.[1]

However, the picture changes completely when we look at the conclusion drawn from the analysis of minor stealing cases. In such cases the relationship of the degree of seriousness of welfare needs of the offender to the degree of severity of sentences is statistically non-significant, in fact the figures may actually indicate an opposite tendency.[2] First of all none of the offenders who committed minor stealing were sent away from home whether they had good or bad scores. Discharges were prevalent in good cases where there was no need for a welfare consideration (75.8 per cent). However fines were used solely in the case of good cases (8.4 per cent). While 15.6 per cent (thirteen out of eighty-three offenders) of good cases were either sent to an attendance centre or put on probation, half of eight average background offenders and three out of seven bad background offenders were dealt with in the same way. This conclusion demonstrates that in the case of minor stealing the decisive factor in sentencing is the offence and the previous criminal record but not the welfare needs

[1]Table 85

[2]Table 86, Chi-square = 8.26

RELATION OF "HOME BACKGROUND AND PERSONAL FACTORS"

TO SEVERITY OF SENTENCE IN SERIOUS STEALING CASES

TABLE 85 LEEK

SENTENCES	Personal Background					
	Good		Average		Bad	
	No.	%	No.	%	No.	%
Absolute Discharge						
Conditonal Discharge	0					
Fine						
Attendance Centre						
Probation	0		6	100	5	100
Fit Person						
Detention Centre						
Approved School						
TOTAL	0	100	6	100	5	100

RELATION OF "HOME BACKGROUND AND PERSONAL FACTORS"

TO SEVERITY OF SENTENCE IN MINOR STEALING CASES

TABLE 86 STOKE-ON-TRENT

SENTENCES	Home Background and Personal Factors					
	Good		Average		Bad	
	No.	%	No.	%	No.	%
Absolute Discharge	3	3.6	0	0	0	0
Conditional Discharge	60	72.2	4	50	4	57.1
Fine	7	8.4	0	0	0	0
Attendance Centre	4	4.8	0	0	1	14.2
Probation	9	10.8	4	50	2	28.5
TOTAL	83	100	8	100	7	100

The Chi-square Test

Non-significant (P = .001)

of offenders. The Leek data indicate an opposite tendency since all the offenders with good backgrounds were conditionally discharged, whereas all average and bad background cases were put on probation.[1] However it is impossible to make statistical inferences because of small sample size.

The importance of the welfare factor should be analysed more deeply than already has been done since it is statistically significant that offende s with good scores have less serious natures of previous criminal record than those who have average and bad scores.[2] It was shown earlier that the nature of previous criminal record was an important factor in sentencing. Then would the most recent finding vitiate the force of the welfare factor in sentencing? In order to find an answer to this important question the influence of the welfare factor in sentencing will be assessed separately in all three different offences where there are no previous convictions. Having thus controlled the previous criminal record factor, we shall then be able to make reliable inferences. Very small numbers made inferences impossible in Leek sample. Therefore, there will be no reference made to Leek juvenile courts' sentences in this part of the analysis.

[1] Table 87

[2] Table 88, Chi-square = 81.18, and Table 89.

RELATION OF "HOME BACKGROUND AND PERSONAL FACTORS"

TO SEVERITY OF SENTENCE IN MINOR STEALING CASES

TABLE 87 LEEK

SENTENCES	Personal Background					
	Good		Average		Bad	
	No.	%	No.	%	No.	%
Absolute Discharge						
Conditional Discharge	3	100				
Fine						
Attendance Centre						
Probation			2	100	2	100
Fit Person						
Detention Centre						
Approved School						
TOTAL	3	100	2	100	2	100

RELATION OF "HOME BACKGROUND AND PERSONAL FACTORS"

TO THE NATURE OF PREVIOUS RECORD IN ALL CASES

TABLE 88 STOKE-ON-TRENT

NATURE OF PREVIOUS RECORD	Home Background and Personal Factors: Good No.	Good %	Average No.	Average %	Bad No.	Bad %
NONE	185	84.8	33	55	32	47
Absolute Discharge and/or conditional discharge and/or fine and/or attendance centre	26	11.9	7	11.6	6	8.8
Probation once before	5	2.2	14	23.3	17	25
Probation on two different times	2	.9	4	6.6	8	11.7
Fit Person once before	0	0	0	0	1	1.4
Probation once before AND Institutional Treatment once before	0	0	2	3.3	1	1.4
Probation on two different onccasions AND Fit Person once before	0	0	0	0	1	1.4
Probation on two different occasions AND Institutional Treatment once before	0	0	0	0	2	2.9
TOTAL	218	100	60	100	68	100

The Chi-square Test
Significant (P = .001)

RELATION OF "HOME BACKGROUND AND PERSONAL FACTORS"

TO THE NATURE OF PREVIOUS RECORD IN ALL CASES

TABLE 89 LEEK

Personal Background

NATURE OF PREVIOUS RECORD	Good		Average		Bad	
	No.	%	No.	%	No.	%
NONE	3	60	5	55.5	3	30
Absolute Discharge and/or conditional discharge and/or Fine and/or Attendance Centre	2	40	4	44.4	3	30
Probation once before	0	0	0	0	4	40
TOTAL	5	100	9	100	10	100

Analysis of breaking and entering offences in the case of first offenders yields a statistically significant relationship between the seriousness of welfare needs to the severity of sentence.[1] Least severe sentences, namely discharges were imposed on 63.1 per cent of offenders with good personal backgrounds, whereas the corresponding percentages were 18.1 and 15.3 in the case of average and bad cases, respectively. Fines are prevalent in average cases (18.1 per cent). Second most and most severe sentences are mainly imposed in bad cases; percentages are 63.5 and 71.1 respectively. So it is demonstrated that, even when the previous criminal record factor was excluded, good background cases were dealt with less drastically than welfare (average and bad personal background) cases.

Similar analysis of serious stealing cases in the case of first offenders yielded a statistically significant relationship between the seriousness of welfare needs and the severity of sentence.[2] While three quarters of all good cases were discharged, only one third of average and bad cases were dealt with similarly. Fines were slightly (6.4 per cent) more popular in good cases than they were in average cases (5.5 per cent). Probation and attendance centre orders constituted a relatively small portion of good cases (17.9 per cent), whereas half of the average (55.5 per cent) and

[1] Table 90, Chi-square = 23.00

[2] Table 91, Chi-square = 27.25

RELATION OF "HOME BACKGROUND AND PERSONAL FACTORS" TO SEVERITY OF SENTENCE IN BREAKING AND ENTERING CASES - FIRST OFFENDERS

TABLE 90 STOKE-ON-TRENT

SENTENCES	Home Background and Personal Factors: Good		Average		Bad	
	No.	%	No.	%	No.	%
Absolute Discharge	0	0	0	0	0	0
Conditional Discharge	24	63.1	2	18.1	2	15.3
Fine	1	2.6	2	18.1	0	0
Attendance Centre	2	5.2	1	9	2	15.3
Probation	11	28.9	6	54.5	7	53.8
Fit Person	0	0	0	0	1	7.6
Detention Centre	0	0	0	0	0	0
Approved School	0	0	0	0	1	7.6
TOTAL	38	100	11	100	13	100

The Chi-square Test
Significant (P = .001)

RELATION OF "HOME BACKGROUND AND PERSONAL FACTORS" TO SEVERITY OF SENTENCE IN SERIOUS STEALING CASES - FIRST OFFENDERS

TABLE 91 STOKE-ON-TRENT

SENTENCES	Home Background and Personal Factors: Good		Average		Bad	
	No.	%	No.	%	No.	%
Absolute Discharge	0	0	0	0	0	0
Conditional Discharge	59	75.6	6	33.3	5	33.3
Fine	5	6.4	1	5.5	0	0
Attendance Centre	4	5.1	0	0	0	0
Probation	10	12.8	10	55.5	8	53.3
Fit Person	0	0	0	0	0	0
Detention Centre	0	0	0	0	0	0
Approved School	0	0	1	5.5	2	13.3
TOTAL	78	100	18	100	15	100

The Chi-square Test
Significant (P = .001)

bad (53.3) cases were dealt with by the same measures. As the sentences became most severe (fit person, detention centre and approved school) good cases were non-existent in this category; average and bad background cases were represented with the following percentages: 5.5 and 13.3 respectively. So the figures reveal that in serious stealing cases and in the case of first offenders welfare (average and bad background) cases were matched by increasing severity of sentences.

In minor stealing cases the relationship of the degree of seriousness of welfare needs of the offender to the degree of severity of sentences is statistically non-significant, in spite of the exclusion of offenders with previous convictions.[1] 82.5 per cent of good cases and 75 per cent of bad cases discharged, either conditionally or absolutely. Fines were used exclusively in the case of good cases. Half of the average, one quarter of bad and 8.6 per cent of good cases were dealt with on the most severe sentences for the minor stealing group, namely attendance centre and probation. There were no removals from home. On the whole cases with welfare issue were not matched by increasing severity of sentences.

[1] Table 92, Chi-Square = 7.37

RELATION OF "HOME BACKGROUND AND PERSONAL FACTORS" TO SEVERITY OF SENTENCE IN MINOR STEALING CASES - FIRST OFFENDERS

TABLE 92 STOKE-ON-TRENT

SENTENCES	Home Background and Personal Factors: Good		Average		Bad	
	No.	%	No.	%	No.	%
Absolute Discharge	2	2.8	0	0	0	0
Conditional Discharge	55	79.7	2	50	3	75
Fine	6	8.6	0	0	0	0
Attendance Centre	3	4.3	0	0	0	0
Probation	3	4.3	2	50	1	25
TOTAL	69	100	4	100	4	100

The Chi-square Test
Non-significant (P = .001)

Conclusion

When the whole analysis of the welfare factor in sentencing is summarised, it is seen that in the case of relatively serious offences like, breaking and entering and serious stealing, courts are influenced by the degree of welfare needs of offenders as well as the nature of previous record and seriousness of offences.[1] But in the case of minor stealing magistrates' interest in the offenders' welfare, being members of a juvenile court (which was originally and still is a criminal court) is related to the offence and nature of the previous criminal record. It is only this (commission of offence) which empowers them to interfere with the offenders' affairs at all, and as minor stealing is a very trivial kind of offence, the courts did not regard themselves as authorized thereby to make any very drastic sentence.

Another important finding is the selection of sentences for varying types of offenders. For example, in Stoke-on-Trent all the sentences involving removal from home were made in the case of offenders whose home background and personal circumstances were classified either average or bad. This shows that the magistrates took into account the welfare needs of the offenders in making such sentences. In other words magistrates resort to these measures, not

[1] Magistrates even sent four first offenders to approved school who committed breaking and entering and serious stealing but not minor stealing. See Tables 90, 91 and 92.

for the punitive effect of an enforced separation from the family, but in order to prevent further deterioration caused by the influence of a bad home and personal circumstances. Grunhut reached a similar conclusion in his comparative survey on the juvenile courts.[1]

On the other hand in Stoke-on-Trent 18.8 per cent of all offenders who had no problems at all, namely good cases, were put on probation. Among them there were 24 first offenders with good backgrounds and personal circumstances. The total of good cases that were put on probation in Stoke-on-Trent was 41.[2] In 33 of such cases probation officers did not recommend probation; in 8 cases they did not make any specific recommendation which means implicitly that they were not in favour of probation in those cases. In Leek one out of five good cases were put on probation where the probation officer did not recommend probation.[3]

Such cases, though they are in minority, indicate that a constructive measure like probation was used as a punishment probably due to the serious circumstances of the offence or the part played by the offender, e.g. he was the instigator. Since access to the records kept by the police was not possible, the actual cause of such decisions is unknown. Besides in Stoke-on-Trent, four out of nineteen fines were imposed in

[1] M. Grunhut, op. cit., p.123

[2] Table 80

[3] Table 81

cases where offenders' personal circumstances and home backgrounds were either average or bad, in spite of the recommendation of probation by the probation officers.[1] Again it seems that the offenders were punished where, in fact, they were in need of a helping hand. However if we take into account the ranking of sentences by the magistrates, it could well be said that the offenders were dealt with leniently. Also in Stoke-on-Trent, 26.2 per cent of all average and 20.5 per cent of all bad cases, where there was a need for constructive measures, were conditionally discharged. The total of such cases is 30. In the 24 cases probation was recommended; no specific suggestion was made in the other 6 cases.

Such use of conditional discharges was probably due to the triviality of the circumstances of the offence or the part played by the offender. However, for the same reason cited above it was not possible to find out what was the motive of the magistrates in selecting such a sentence in such cases. Offenders were virtually mildly punished or according to one view were let-off, where in fact they were in need of some kind of help. Again it may be claimed that the offenders were dealt with leniently in these cases.

Finally it emerged from the above findings that offenders with good

[1]Cf. R.M. Carter and L.T. Wilkins, "Some Factors in Sentencing Policy", in Journal of Criminal Law, Criminology and Police Science, 58, (1967), 503-11. They discovered when probation was recommended by an officer the judge nearly always gave probation.

backgrounds and personal circumstances amount to 62.7 per cent of all sample cases in Stoke-on-Trent, whereas in Leek only 20.7 per cent have these backgrounds and circumstances. Such widely differing percentages undoubtedly explains the high rate of conditional discharge in Stoke-on-Trent and the high rate of probation in Leek.

5. The "Age" Factor

It is commonly believed that offenders in the younger age group (10-13 inc) receive greater leniency in juvenile court than offenders in the older group (14-16 inc). This belief is based on various suppositions such as, younger group arouse more paternal sentiments within the magistrates and they commit less serious offences and they have less serious nature of previous criminal record. Apart from these beliefs the law prohibits the imposition of detention centre order in the case of younger group.

In order to assess the relationship of age to seriousness of offence more accurately it is necessary, first, to investigate whether the older group commit more serious offences than younger group, and, secondly, whether older group have a more serious nature of previous criminal record than the younger group.

So far as the first question is concerned the analysis yielded the result that the relation between the offence and the age groups is statistically non-significant, in spite of an apparent tendency

that younger group is responsible from less serious offences.[1] 32.3 per cent of the younger group committed minor stealing, whereas the corresponding figure for older group was 25.8 per cent. Most serious offence, breaking and entering committed by 27 per cent of all the offenders in the younger group, but 31.4 per cent of the older group is responsible for this offence. However differences are statistically non-significant. In Leek, on the other hand, there seems a tendency that the younger group offenders committed less serious offences than the older group.[2] Half of the offenders in the younger group are responsible from minor stealing, whereas only one offender in older group committed such an offence. On the other hand, five out of six breaking and entering offences are committed by older group. However, statistical inferences cannot be made because of the small size of the Leek sample.

Analysis of the relationship of age to the seriousness of the previous criminal record again yields a non-significant result.[3] There are more first offenders in the younger group (81.9 per cent) than in the older group (66.8 per cent). The percentages of the second least serious nature of previous criminal record, i.e. to

[1]Table 93, Chi-square = 1.84

[2]Table 94

[3]Table 95, Chi-square = 10.05

DISTRIBUTION OF CASES BY AGE AND TYPE OF OFFENCE

TABLE 93 STOKE-ON-TRENT

	Age Groups			
	10-13 (inc)		14-16 (Inc)	
OFFENCES	No.	%	No.	%
Minor stealing	43	32.3	55	25.8
Serious stealing	54	40.6	91	42.7
Breaking and entering	36	27	67	31.4
TOTAL	133	100	213	100

The Chi-square Test

Non-significant (P = .001)

DISTRIBUTION OF CASES BY AGE AND TYPE OF OFFENCE

TABLE 94 LEEK

OFFENCES	Age Groups 10-13 (inc) No.	%	14-16 (inc) No.	%
Minor stealing	6	50	1	8.3
Serious stealing	5	41.6	6	50
Breaking and entering	1	8.3	5	41.6
TOTAL	12	100	12	100

RELATION OF AGE TO THE NATURE OF PREVIOUS RECORD IN ALL CASES

TABLE 95 STOKE-ON-TRENT

NATURE of Previous Record	Age Groups 10-13 (inc) No.	%	14-16 (inc) No.	%
NONE	109	81.9	141	66.8
Absolute Discharge and/or Fine and/or Conditonal Discharge and/or Attendance Centre	8	6	29	13.7
Probation once before	11	8.2	25	11.8
Probation on two different occasions	3	2.2	11	5.2
Fit Person once only	0	0	1	.4
Probation once AND Institutional Treatment once	2	1.5	1.	.4
Probation on two different occasions and Fit Person once	0	0	1	.4
Probation on two different occasions and Institutional Treatment once	0	0	2	.9
TOTAL	133	100	211	100

Note: Two Detention Centre Cases were excluded.

The Chi-square Test
Non-significant (P = .001)

be discharged and/or fined previously, is 6% in the case of the younger group and 13.7% in the case of the older group. 10.4 per cent of the younger group and 17% of the older group were dealt with by probation once or twice previously. As far as the removal from home is concerned 2.5 per cent of the older group and 1.5 per cent of the younger group have this kind of previous criminal record. In Leek too the tendency is: the older group has more serious nature of previous criminal record than the younger group. Two thirds of the younger group and one quarter of the older group are first offenders. However, statistical inferences cannot be made because of the small size of the Leek sample.[1]

Having shown that there is no indication that older offenders commit more serious offences, and have no more serious nature of previous criminal record, we can now analyse the age factor in sentencing. A comparison of the two age-groups shows that the younger group do not receive lighter sentences than the older group.[2] The younger group receives a slightly higher percentage of both types of discharges than the older group (53.2, 51.6). Fines are imposed much more on the older group (8.6) than on the younger offenders (.7). The percentages of attendance centre and probation received for the younger

[1]Table 96

[2]Table 97, Chi-square = 10.32

RELATION OF AGE TO THE NATURE OF PREVIOUS RECORD IN ALL CASES

TABLE 96 LEEK

NATURE of Previous Record	Age Groups 10-13 (inc) No.	%	14-16 (inc) No.	%
NONE	8	66.6	3	25
Absolute Discharge and/or conditional discharge and/or Fine and/or Attendance Centre	4	33.3	5	41.6
Probation once before	0	0	4	33.3
TOTAL	12	100	12	100

RELATION OF AGE TO SEVERITY OF SENTENCE IN ALL CASES

TABLE 97 STOKE-ON-TRENT

SENTENCES	Age Groups 10-13 (inc) No.	%	14-16 (inc) No.	%
Absolute Discharge	1	.7	2	.9
Conditional Discharge	72	52.5	105	50.7
Fine	1	.7	18	8.6
Attendance Centre	9	6.5	7	3.3
Probation	42	30.6	60	28.5
Fit Person	4	2.9	2	.9
Approved School	8	5.8	13	6.7
TOTAL	137	100	207	100

Note: Two Detention Centre cases were excluded.

The Chi-square Test
Nonesignificant (P = .001)

to older group are 37.1 and 31.8 respectively. The younger group also receives slightly higher percentage of most severe sentences, namely fit person and approved school (8.7, 7.6).[1] Analysis thus proved that the relation of age to severity of sentence is statistically non-significant.

In Leek, on the other hand, the percentages of conditional discharges received in both groups going from the younger to older group is as follows: 25, 8.3.[2] The younger groups receives a lower percentage of most severe sentence, namely probation order, in Leek (75, 91.6). The Leek finding indicates a tendency (if is not statistically proved) that age is another factor in sentencing. However, an additional variable intervening between age and the severity of the sentences is the nature of previous criminal record. Therefore in the Leek sample a further analysis is carried out; that is the analysis of the relation of age to the severity of sentence in the case of first offenders.[3] Analysis shows that in the case of first offenders the younger group is treated more severely (75 per cent) than the older group (66.6 per cent). However, it is not statistically proved, because of the small size of the Leek sample.

[1]Detention Centre cannot be made in the case of younger group.

[2]Table 98

[3]Table 99

RELATION OF AGE TO SEVERITY OF SENTENCE IN ALL CASES

TABLE 98 LEEK

SENTENCES	Age Groups 10-13 (inc) No.	%	14-16 (inc) No.	%
Absolute Discharge				
Conditional Discharge	3	25	1	8.3
Fine				
Attendance Centre				
Probation	9	75	11	91.6
Fit Person				
Approved School				
TOTAL	12	100	12	100

RELATION OF AGE TO SEVERITY OF SENTENCE IN THE CASE OF FIRST OFFENDERS

TABLE 99 LEEK

SENTENCES	Age Groups 10-13 (inc) No.	%	14-16 (inc) No.	%
Absolute Discharge				
Conditional Discharge	2	25	1	33.3
Fine				
Attendance Centre				
Probation	6	75	2	66.6
Fit Person				
Approved School				
TOTAL	8	100	3	100

Note: Two Dentention Centre cases were exdluded

Conclusion

To sum up, Stoke-on-Trent data confirmed that there is no relation between the age of offenders and the sentences imposed on them. Leek findings, on the other hand, demonstrate that age differences in the nature of previous criminal record rather than age-group per se produces the variations in sentences between younger and older groups.

6. The "Sex" Factor

Juvenile court law makes only one exception between boys and girls in sentencing. As it was pointed out before, attendance centre order cannot be made in the case of girls.[1] In the eyes of law, therefore, sex is irrelevant in sentencing as a rule. However this does not eliminate the possibility that sex differences may affect sentencing in juvenile courts. Do more protective attitudes toward girls affect the severity of the sentences imposed on them?

A comparison of the sentences imposed upon girls and boys yields statistically non-significant results which affirm the equality of the sexes before the law.[2] Girls receive higher percentage (67.1) of discharges than boys (50.9). There is no difference in the case

[1] Since 31st January 1969, detention centre ceased to be available for girls.

[2] Table 100, Chi-square = 6.83

RELATION OF SEX TO SEVERITY OF SENTENCE IN ALL CASES

TABLE 100 STOKE-ON-TRENT

SENTENCES	Sex of Offenders: Female No.	Female %	Male No.	Male %
Absolute Discharge	0	0	3	1.1
Conditional Discharge	49	67.1	128	49.8
Fine	4	5.4	15	5.8
Probation	17	23.2	85	33
Fit Person	0	0	6	2.3
Detention Centre	0	0	2	.7
Approved School	3	4.1	18	7
TOTAL	73	100	257	100

Note: Attendance Centre order cannot be made in the case of girls

The Chi-square Test
Non-significant (P = .001)

of fines (girls 5.4 per cent, boys 5.8 per cent). The percentage of boys who are put on probation is 33, whereas the corresponding percentage for girls is 23.2. Again girls receive slightly higher percentage (4.1) of sentences involving removal from home than boys (3.7). No comparison is made in Leek because there is only one girl in the sample. The results show that sex differences do not produce variations in sentences.

CHAPTER 14

CONCLUSIONS

The examination of the samples of offenders and magistrates has thrown some light on the sentencing policy of the juvenile courts in Stoke-on-Trent and Leek. A summary of the main discoveries of this study is presented in the first part of this chapter. The final section will discuss the conclusions which emerge concerning the extent of the welfare principle in the juvenile court sentencing.

I - SUMMARY

1. Both areas have a higher crime rate than the whole country. (Chapter 8)
2. The unemployment rate in offenders' families is higher than the unemployment rate in both areas. (Chapter 8)
3. Stoke-on-Trent has a lower cautioning rate than England and Wales (Chapter 8).
4. Stoke-on-Trent is a high conditional discharge area whereas Leek is a high probation area. (Chapter 9)
5. Few magistrates have not visited the various institutions where they commit offenders ~~either~~ for the purpose of remand. (Chapter 10)
6. The social class composition of benches is predominantly middle strata and employers whereas the offenders are predominantly from manual working class families. (Chapter 10)

7. Leek magistrates are more liberal, in the sense that they are in favour of long-run social change, than Stoke-on-Trent magistrates. On the other hand magistrates on either benches are more liberal than Tories as well as American judges. (Chapter 10)

8. The only statistically significant relationship between various personal and background characteristics of magistrates and their social attitudes, i.e. liberalism, is the social class. Non-manual (middle strata) and manual workers are more liberal than employers and proprietors. (Chapter 10)

9. Social Attitudes of magistrates have very little bearing on the decisions they reach. Conservative magistrates i.e. those who resist long-run social change, impose slightly more severe sentences than liberal magis.rates in a like cases. As a result of sitting together and the compulsion of agreement in making a sentence, and probably due to the discussion on the sentencing policy in general among themselves, the differences between liberal and conservative magistrates in imposing sentences with varying degree of severity is very small. (Chapter 11)

10. Magistrates' sentencing attitudes (sentences they attached to the various test cards) in good cases are, except in one case, negligibly more severe than the actual decisions they made in a like cases. (Chapter 12)

11. Whether the offenders are first offenders or not there is a statistically significant relationship between the offence and the sentence. Increasing seriousness of offences are matched by increasing severity of sentences. (Chapter 13)

12. There is also a statistically significant relationship between the nature of the previous criminal record and the sentence. Increasing seriousness of nature of previous criminal records are matched by increasing severity of sentences. The nature of previous criminal record is the predominant factor among all other factors. (Chapter 13)

13. Unless the offence is trivial, there is a statistically significant relationship between the seriousness of the welfare needs of offenders and the sentences. Excepting the trivial offence situation increasing seriousness of welfare needs of offenders are matched by increasing severity of sentences. However in the case of a trivial offence, which in the sample is minor stealing, magistrates base their sentencing decisions on the offence itself whatver the welfare needs of the offenders are. (Chapters 12 and 13)

14. No single factors (e.g. previous convictions or welfare consideration) is decisive in every case; instead courts weigh together a combination of relevant factors present in a given case, in deciding which sentence to impose. (Chapter 13)

15. Stoke-on-Trent is a high conditional discharge area. One reason is that more offenders with good backgrounds and personal circumstances come before the courts than those with welfare needs and problems. In this part of the analysis quality of the background and personal circumstances of the offenders reflects non-material circumstances. A second reason is that in a minority of cases Stoke-on-Trent magistrates are virtually lenient since they conditionally discharge those offenders with welfare needs and problems and consequently in need of some constructive treatment.

Leek, on the other hand, is a high probation area since, unlike Stoke-on-Trent, there are more offenders with welfare needs and problems than offenders with no such needs and problems. (Chapters 9 and 13)

Detention centre and fines - in the case of indictable offences only - are very little used in Stoke-on-Trent. In Leek, again in the case of indictable offences only, fine, attendance centre (none is available to the court), detention centre and fit person are not imposed. In both areas fines are imposed mostly in motoring offences and street disorders. (Chapter 8)

Magistrates resort to measures which involve removal from home not for the punitive effect of an enforced separation from the family or incapacitating him temporarily from the society to

protect the public, but in order to prevent further deterioration caused by the influence of a bad home and personal circumstances. (Chapter 13)

However in a minority of cases offenders with good home backgrounds and personal circumstances were put on probation. This shows that in such cases probation is used as a punishment. (Chapter 13)

16. There is no statistically significant relationship between the number of offences taken into consideration and the sentence. Increasing number of offences taken into consideration are not matched by increasing severity of sentences. (Chapter 13)

17. In Stoke-on-Trent there is no statistically significant relationship between the different age groups of offenders and the sentence. In Leek, on the other hand, there is an indication of such relationship. However further investigation demonstrates that age differences in the nature of previous criminal record rather than age per se produces the variations in the degree of severity in sentences between younger and older groups. (Chapter 13)

18. There is no statistically significant relationship between the sex of offenders and the sentence. This affirms the equality of sexes in the juvenile court sentencing. (Chapter 13)

19. Juvenile courts tend to ignore the welfare needs of the offenders if the offence is trivial. (Chapter 13)

II - CONCLUSIONS

The philosophy of the very founders of the English juvenile court was the punishment per se of the juvenile offenders, though in a completely different setting from that in which the adult offenders were punished. However, since then the concept of reformation of offenders through the welfare principle has taken its place in the English juvenile court. By that time the philosophy of the juvenile court became that the courts ought to have in mind the welfare needs of juvenile offenders as well as the offence.

Thus the juvenile courts were put in a peculiar position. On the one hand they must take into account the welfare needs of juvenile offenders but the welfare needs are not necessarily in proportion to the offence committed. On the other hand they are basically criminal courts, though modified in their jurisdiction, procedure and sentencing. In other words they are to administer a legal justice which aims at punishing the offender and at the same time promote the welfare of the juvenile offender. These two aims are bound to clash with each other.

This peculiar feature of the juvenile court system forced the juvenile court magistrates, as it is shown in the present study, to ignore the welfare needs of the juvenile offenders where the offence is trivial. Thus the original hypothesis is acceptable when it states that the offence and the previous criminal record are more potent determiners of sentence than is the welfare effect.

Accordingly the legal justice remains a powerful consideration in the juvenile court system.

Admittedly the juvenile court magistrates are in a dilemma as to their sentencing functions in criminal proceedings. On the other hand, juvenile courts should intervene to protect juveniles who are in need of care, protection or control in non-criminal proceedings, and in this situation the only principle which can be applied is that such juveniles should be dealt with according to their welfare needs.

The new Children and Young Persons Act, 1969, brings together criminal and care proceedings in a single code in the case of children while retaining the possibility of criminal proceedings against young persons. The philosophy behind that part of the new Act which deals with "care proceedings" is the idea that the welfare principle, in the case of juveniles under fourteen, becomes a paramount consideration.[1]

Turning to the provisions on criminal proceedings against "young persons", a partial modification of the idea that the welfare of the "child" must be the paramount consideration, is found. The restrictions on prosecution in the case of young persons will be imposed by regulations which will be made by the Home Secretary. The gist of these regulations would seem to be that in cases where no compulsory measures are required in the interests of the young

1 Same footnote 1 in the Abstract.

persons welfare, a prosecution may proceed if it is considered that the gravity of the offence is such as to make prosecution desirable or that the regulatory effect of a fine or other minor sanction is required.

It is obvious that the system brought into existence by the new Act has saved the juvenile court from a peculiar position. It is also a progressive step in the treatment of juvenile offenders since it embodies the modern trend in the whole juvenile court movement by establishing the welfare principle as a paramount consideration in sentencing. However, the quantity and the quality of the various educational and social services which carry out the treatment of juvenile offenders and maladjusted children should be improved. Unless this is done, merely changing the structure of the juvenile court and thus placing a heavier burden on those services could have adverse effects on the contemporary methods of dealing with juvenile offenders.

APPENDIX I

The Questionnaire

Court:

Name of the Magistrate

Sex of the Magistrate

Age of the Magistrate

Marital status of the Magistrate

Question 1

Profession (in the case of housewives, husband's occupation)

Please give details.

Question 2

At what age did you finish your full-time education?

Question 3

Number of children

Question 4

Other than your magisterial duties, have you done any work with children or young people?

Question 5

a) How long have you been a juvenile court magistrate?

b) Have you undergone any training relating to your juvenile court magistracy? Yes No

Please give details.

Question 6

Which penal institutions did you visit?

Please give details.

Question 7

Have you ever been a prison visitor? Yes No

Please give details.

Question 8

Below are given 6 statements which represent widely-held opinions on various social questions, selected from speeches, books, newspapers, and other sources. They were chosen in such a way that most people are likely to agree with some and disagree with others. After each statement please record your completely confidential personal opinion regarding the statement, using the following system of marking:

+ + if you strongly agree with the statement

\+ if you agree on the whole but not strongly

0 if you cannot decide for or against or if you think the question is worded in such a way that you cannot give an answer

\- if you disagree on the whole but not strongly

\- - if you strongly disagree

OPINION STATEMENTS	Your Opinion
1. There should be far more controversial and political discussion over radio and T.V.	
2. Abortion, except when medically indicated, should not be legal.	
3. Our treatment of adult offenders is too harsh.	
4. It is right and proper that the law made divorce easier.	
5. Death Penalty should not be restored.	
6. Religious education in schools should be compulsory.	

APPENDIX II

Offender Typologies used in the measurement of Magistrates' Sentencing Attitudes (Magistrates' Test).

CARD 1

OFFENCE : Breaking and Entering

AGE : 14-16 inclusive

SEX : Male

OFFENCES TAKEN INTO CONSIDERATION : None

PREVIOUS CRIMINAL RECORD : None

CARD 2

OFFENCE : Breaking and Entering

AGE : 10-13 inclusive

SEX : Male

OFFENCES TAKEN INTO CONSIDERATION : None

PREVIOUS CRIMINAL RECORD : None

CARD 3

OFFENCE : Serious Stealing

AGE : 14-16 inclusive

SEX : Male

OFFENCES TAKEN INTO CONSIDERATION : None

PREVIOUS CRIMINAL RECORD : None

CARD 4

OFFENCE : Serious Stealing

AGE : 10-13 inclusive

SEX : Male

OFFENCES TAKEN INTO CONSIDERATION : None

PREVIOUS CRIMINAL RECORD : None

CARD 5

OFFENCE : Serious Stealing

AGE : 10-13 inclusive

SEX : Female

OFFENCES TAKEN INTO CONSIDERATION : None

PREVIOUS CRIMINAL RECORD : None

CARD 6

OFFENCE : Minor Stealing

AGE : 14-16 inclusive

SEX : Male

OFFENCES TAKEN INTO CONSIDERATION : None

PREVIOUS CRIMINAL RECORD : None

TABLE OF CASES

BIBLIOGRAPHY

I - BOOKS AND ARTICLES (Other than Government Publications)

T. Adorne, E. Frenkel-Brunswick, D.J. Levinson and R.N. Sanford, "The Authoritarian Personality", 1950, Harper.

K. Bilton, "Children and Justice", in Justice of the Peace and Local Government Review, April 19, 1969.

P. Boss, "Social Policy and the Young Delinquent", 1967, Routledge and Kegan Paul, London.

R. Brown, "Social Psychology", 1965, New York.

M.P. Callard, "Distinguishing Recidivists Among First Offenders", 1965, University of Exeter. idem. "Dilemma for the Juvenile Magistrate", in New Society, 18 February, 1965.

M. Carpenter, "Reformatory Schools for the Children of the Perishing and Dangerous Classes and for Juvenile Offenders", 1851, Bennett, London.

R.M. Carter and L.T. Wilkins, "Some Factors in Sentencing Policy", in Journal of Criminal Law, Criminology, and Police Science, 58, 1967.

W. Cavenagh, "Justice and Welfare in Juvenile Courts", in British Journal of Delinquency, Vol. VII, No. 3, January 1957.
idem. and R. Sparks, "Out of Court?", in New Society, 15 July 1965.

W. Cavenagh, "What Kind of Court or Committee?" in British Journal of Criminology, Vol. 6, No. 2, April 1966.
idem. "Juvenile Courts, the Child and the Law", 1967, Penguin.

R. Centers, "Psychology of Social Classes", 1949, Princeton University Press.

J.B. Christoph, "Capital Punishment and British Politics", 1962, Allen and Unwin, London

C.J. Collinge, "Juvenile Courts and their Jurisdiction", in Proceedings of the Fifth International Congress on Social Defence, Stockholm, 1958.

K.M. Devlin, "Sentencing Offenders in Magistrates' Courts", 1970, Sweet and Maxwell, London.

E. DuCane, "The Punishment and Prevention of Crime", 1885, Macmillan, London.

F. Engels, "Condition of Wroking-Class in England", in Marx and Engels on Britain, 1962, Progress Publishers, Moscow.

H. Eysenck, "Psychology of Politics", 1954, Routledge and Kegan Paul, London.

P.J. Fitzgerald, "Criminal Law and Punishment", 1962, Clarendon Law Series, Oxford.

J. Glover, "Neglect in High Places", in Supplement to the Evening Sentinel, 31 January 1968.

A.L. Goodheart, "English Law and the Moral Law", 1953, Hamlyn Lectures, London.

L. Goodman, "English Juvenile Courts - Recent Changes in Legislation", in International Journal of Offender Therapy, 1970, Vol.14, No.2.

B.F. Green, "Attitude Measurement", in Handbook of Social Psychology, 1954.

E. Green, "Judicial Attitudes in Sentencing, 1961, Macmillan, London.

M. Grunhut, "Competence and Constitution of the Juvenile Court", in Lawless Youth, Chapter II, by M. Fry et.al., 1947, Allen and Unwin, London.

idem "Penal Reform", 1948, Oxford University Press.

idem "Juvenile Offenders before the Courts", 1956, Clarendon Press, Oxford.

J.E. Hall Williams, "Myths of Criminal Justice", in Crime-Myths and Reality, 1969, London.

idem "The English Penal System in Transition", 1970.

H.L.A. Hart, "Punishment and Responsibility", 1968, Oxford University Press.

R.S.E. Hinde, "The British Penal System 1773-1950", 1951, Duckworth, London.

J. Hogarth, "Sentencing Research - Some Problems of Design", in British Journal of Criminology, Vol. 7, No. 1, January 1967.

R. Hood, "Sentencing in Magistrates" Courts", 1962, Stevens and Sons, London.

S. Hurwitz, "Criminology", 1952, Allen and Unwin, London.

R.M. Jackson, "The Machinery of Justice in England", 1967, Cambridge University Press.

T.E. James, "Child Law", 1962, Sweet and Maxwell.

idem "Children and the Law", 1965, Pergamon Press, London.

H. Jones, "Crime and the Penal System", 1965, University Tutorial Press, London.

W.A. Kerr, "Correlates of Political-Economic Liberalism-Conservatism", in Journal of Social Psychology, Vol. 20, 1944.

K. Kyle, "These words meant six years in a Turkish gaol for their author", in The Guardian, December 1968.

Labour Party Study Group, "Crime-A Challenge to Us All", 1964.

Leek Urban District Council, "Official Guide of Leek".

Longford (Earl of), "The Idea of Punishment", 1961, Chapman, London.

The Magistrates' Association, "Forty-Eighth Annual Report 1967-1968".

H. Mannheim, J. Spencer and G. Lynch, "Magisterial Policy in the London Juvenile Courts", in British Journal of Delinquency, July 1957 and October 1957.

H. Mannheim, "Some Aspects of Judicial Sentencing Policy", in The Yale Law Journal, May 1958, Vol. 67, No.6.

T.H. Marshall, "Social Policy", 1965, Hutchinson, London

J.D. McClean and J.C. Wood, "Criminal Justice and the Treatment of Offenders", 1969.

F.H. McClintock and N.H. Avison, "Crime in England and Wales", 1968, Heinemann, London.

T. Morris, "Struggle for the Juvenile Court", in New Society, 10 February 1966.

S. Nagel, "Off-the-Bench Judicial Attitudes", in Judicial Decision-Making, ed. by G. Schubert, 1963.

T. Newcomb, "Personality and Social Change", 1943, Dryden Press, New York.

Newsweek, June 16, 1969.

J. Nicholson, "On Development", in The Guardian, Special Report on Stoke-on-Trent, June 21, 1971.

O. Nyquist, "Juvenile Justice", 1960, Macmillan, London.

K.W. Patchett and J.D. McClean, "Decision-Making in Juvenile Cases", in Criminal Law Review, 1965, pp. 699-710.

J.D.W. Pearce, "Juvenile Delinquency", 1952, Cassel.

P. Pringle, "Is this steamroller justice?", in The Sunday Times, 18 October 1970.

L. Radzinowicz, "A History of the English Criminal Law", Vol.I, 1948, Stevens, London.

A.G. Rose, "The Struggle for Penal Reform", 1961, Stevens, London.

P.D. Scott, "Residential Treatment of Juvenile Delinquents", in British Journal of Delinquency, 1951, Vol. 2.

idem. "Juvenile Courts: The Juvenile's Point of View", in British Journal of Delinquency, Vol. IX, No.3, January 1959.

T. Sellin and M.E. Wolfgang, "The Measurement of Delinquency", 1964, John Wiley, New York.

S. Siegel, "Nonparametric Statistics for the Behavioral Sciences", 1956, McGraw-Hill Book Co., New York.

W.J.H. Sprott, "Sentencing Policy", in The Sociological Review Monograph, No.9, Sociological Studies in the British Penal Services, ed. P. Halmos, University of Keele, 1965.

D. Steer, "Police Cautions - a Study in the Exercise of Police Discretion", 1970, Basil Blackwell, Oxford.

F. Stephen, "History of the Criminal Law in England", 1883, Macmillan, London.

P. Tappan, "Crime, Justice and Correction", 1960, McGraw-Hill, New York.

D.A. Thomas, "Principles of Sentencing - The Sentencing Policy of the Court of Appeal Criminal Division", 1970, Heinemann, London.

J.W.C. Turner, "Russel on Crime", Vol. I, 1964, Stevens.

G.B. Vetter, "What makes attitudes and opinions Liberal or Constructive", in Journal of Abnormal and Social Psychology, Vol. 42, 1947.

P.M.W. Voelcker, "Juvenile Courts: the Parents' Point of View", in British Journal of Criminology, Vol. 1, No.2, October 1960.

N. Walker, "Crime and Punishment in Britain", 1965, University Press, Edinburgh.

idem. "The Aims of a Penal System", in New Society, 5 January 1967.

idem. "Sentencing in a Rational Society", 1971, Allen Lane, The Penguin Press.

idem. "Crimes, Courts and Figures", 1971, Penguin Books.

E.J.D. Warrilow, "Sociological History of the City of Stoke-on-Trent", 1960.

J. Watson, "The Child and the Magistrate", 1965, Jonathan Cape.

idem. "Which is the Justice?", 1969, George and Unwin, London.

idem. "The Juvenile Court - 1970 Onward", 1970, Shaw, London.

D.J. West, "The Young Offender", 1967, Penguin.

A.F. Willcox, "Police Cautions in Five Towns", in Criminal Law Review, 1971, p. 515.

G. Williams, "The Criminal Responsibility of Children", 1954, in Criminal Law Review, 1971, p. 493.

B. Wootton, "Social Science and Social Pathology", 1959, Allen and Unwin, London.

idem. "Crime and its Rewards", in New Society, 23 September 1965.

E. Younghusband, "The Juvenile Court and the Child", in British Journal of Delinquency, Vol. VII, No.3, January 1957.

II - GOVERNMENT PUBLICATIONS

A - Reports

Report of the Departmental Committee on the Treatment of Young Offenders, 1927, Cmd. 2831.

Report of the Royal Commission on Justices of the Peace, 1948, Cmd. 7463.

Report of the Royal Commission on Capital Punishment, 1953, Cmd. 8932.

Report of the Advisory Council on the Treatment of Offenders, "Alternatives to Short Terms of Imprisonment", 1957.

Report of the Committee on Children and Young Persons, 1960, Cmnd. 1191.

Report of the Interdepartmental Committee on the Business of the Criminal Courts, 1961, Cmnd. 1289.

Report of the Departmental Committee on Criminal Statistics, 1967, Cmnd. 3448.

Report of the Royal Commission on Trade Unions and Employers' Associations, 1968, Cmnd. 3623.

Report on the Work of the Children's Department, 1967-1969.

Report of the Advisory Council on the Penal System, "Detention Centres", 1970.

B - White Papers

"Penal Practice in a Changing Society", 1959, Cmnd. 645.

"The Child, the Family and the Young Offender", 1965, Cmnd. 2742.

"The Training of Justices of the Peace in England and Wales", 1965, Cmnd. 2856.

"Children in Trouble", 1968, Cmnd. 3601.

C - Statistics (Other than Criminal Statistics)

Sample Census, County Report, Staffordshire, 1966.

Economic Activity, County Leaflet, Staffordshire, 1966.

Statistical Review of England and Wales, 1968, Part II, Tables, Population.

Employment and Productivity Gazette, Vol. 76, August 1968.

Abstract of Regional Statistics, 1969.

D - CRIMINAL STATISTICS

Supplementary Statistics Relating to Crime and Criminal Proceedings in the year 1967.

Supplementary Statistics Relating to Crime and Criminal Proceedings in the year 1968.

Criminal Statistics, England and Wales, 1968, Cmnd. 4098.

E - GOVERNMENT SOCIAL SURVEY

H.D. Willcock and J. Stokes, "Deterrents and Incentives to Crime among Youths aged 15-21 years", 1963, Part 2.

F - OTHERS

"The Sentence of the Court", A Handbook for Courts on the Treatment of Offenders, 1969.

"The Sentence of the Court", Supplement on the Children and Young Persons Act 1969, 1971.